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AN ACT

To enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Energy policy.

DIVISION A—ENERGY AND COMMERCE

- Sec. 10001. Short title.

TITLE I—ENERGY CONSERVATION

Subtitle A—Federal Leadership in Energy Conservation

- Sec. 11001. Energy and water saving measures in congressional buildings.
- Sec. 11002. Energy management requirements.
- Sec. 11003. Energy use measurement and accountability.
- Sec. 11004. Federal building performance standards.
- Sec. 11005. Procurement of energy efficient products.
- Sec. 11006. Energy savings performance contracts.
- Sec. 11007. Voluntary commitments to reduce industrial energy intensity.
- Sec. 11008. Federal agency participation in demand reduction programs.
- Sec. 11009. Advanced Building Efficiency Testbed.
- Sec. 11010. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.
- Sec. 11011. Use of photovoltaic energy in public buildings.
- Sec. 11012. Telecommuting study.

Subtitle B—Energy Assistance and State Programs

- Sec. 11021. LIHEAP and weatherization assistance.
- Sec. 11022. State energy programs.
- Sec. 11023. Energy efficient appliance rebate programs.
- Sec. 11024. Energy efficient public buildings.
- Sec. 11025. Low income community energy efficiency pilot program.

Subtitle C—Energy Efficient Products

- Sec. 11041. Energy Star program.
- Sec. 11042. Consumer education on energy efficiency benefits of air conditioning, heating, and ventilation maintenance.
- Sec. 11043. Additional definitions.
- Sec. 11044. Additional test procedures.
- Sec. 11045. Energy conservation standards for additional consumer and commercial products.
- Sec. 11046. Energy labeling.
- Sec. 11047. Study of energy efficiency standards.

TITLE II—OIL AND GAS

Subtitle A—Alaska Natural Gas Pipeline

- Sec. 12001. Short title.
- Sec. 12002. Findings and purposes.
- Sec. 12003. Definitions.
- Sec. 12004. Issuance of certificate of public convenience and necessity.
- Sec. 12005. Environmental reviews.

- Sec. 12006. Pipeline expansion.
- Sec. 12007. Federal Coordinator.
- Sec. 12008. Judicial review.
- Sec. 12009. State jurisdiction over in-State delivery of natural gas.
- Sec. 12010. Study of alternative means of construction.
- Sec. 12011. Clarification of ANGTA status and authorities.
- Sec. 12012. Sense of Congress.
- Sec. 12013. Participation of small business concerns.
- Sec. 12014. Alaska pipeline construction training program.

Subtitle B—Strategic Petroleum Reserve

- Sec. 12101. Full capacity of Strategic Petroleum Reserve.
- Sec. 12102. Strategic Petroleum Reserve expansion.
- Sec. 12103. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs.

Subtitle C—Hydraulic Fracturing

- Sec. 12201. Hydraulic fracturing.

Subtitle D—Unproven Oil and Natural Gas Reserves Recovery Program

- Sec. 12301. Program.
- Sec. 12302. Eligible reservoirs.
- Sec. 12303. Focus areas.
- Sec. 12304. Limitation on location of activities.
- Sec. 12305. Program administration.
- Sec. 12306. Advisory Committee.
- Sec. 12307. Limits on participation.
- Sec. 12308. Payments to Federal Government.
- Sec. 12309. Authorization of appropriations.
- Sec. 12310. Public availability of project results and methodologies.
- Sec. 12311. Sunset.
- Sec. 12312. Definitions.

Subtitle E—Miscellaneous

- Sec. 12401. Appeals relating to pipeline construction projects.
- Sec. 12402. Natural gas market data transparency.
- Sec. 12403. Oil and gas exploration and production defined.
- Sec. 12404. Complex well technology testing facility.

TITLE III—HYDROELECTRIC

Subtitle A—Alternative Conditions

- Sec. 13001. Alternative conditions and fishways.

Subtitle B—Additional Hydropower

- Sec. 13201. Hydroelectric production incentives.
- Sec. 13202. Hydroelectric efficiency improvement.
- Sec. 13203. Small hydroelectric power projects.
- Sec. 13204. Increased hydroelectric generation at existing Federal facilities.

TITLE IV—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

- Sec. 14001. Short title.
- Sec. 14002. Extension of indemnification authority.
- Sec. 14003. Maximum assessment.
- Sec. 14004. Department of Energy liability limit.
- Sec. 14005. Incidents outside the United States.
- Sec. 14006. Reports.
- Sec. 14007. Inflation adjustment.
- Sec. 14008. Price-Anderson treatment of modular reactors.
- Sec. 14009. Applicability.
- Sec. 14010. Prohibition on assumption by United States Government of liability
for certain foreign accidents.
- Sec. 14011. Secure transfer of nuclear materials.
- Sec. 14012. Nuclear facility threats.
- Sec. 14013. Unreasonable risk consultation.
- Sec. 14014. Financial accountability.
- Sec. 14015. Civil penalties.

Subtitle B—Miscellaneous Matters

- Sec. 14021. Licenses.
- Sec. 14022. Nuclear Regulatory Commission meetings.
- Sec. 14023. NRC training program.
- Sec. 14024. Cost recovery from Government agencies.
- Sec. 14025. Elimination of pension offset.
- Sec. 14026. Carrying of firearms by licensee employees.
- Sec. 14027. Unauthorized introduction of dangerous weapons.
- Sec. 14028. Sabotage of nuclear facilities or fuel.
- Sec. 14029. Cooperative research and development and special demonstration
projects for the uranium mining industry.
- Sec. 14030. Uranium sales.
- Sec. 14031. Medical isotope production.
- Sec. 14032. Highly enriched uranium diversion threat report.
- Sec. 14033. Whistleblower protection.
- Sec. 14034. Preventing the misuse of nuclear materials and technology.
- Sec. 14035. Limitation on legal fee reimbursement.
- Sec. 14036. Transfer.
- Sec. 14037. Study to determine feasibility of developing commercial nuclear en-
ergy production facilities at existing Department of Energy
sites.

TITLE V—VEHICLES AND FUELS

Subtitle A—Energy Policy Act Amendments

- Sec. 15011. Credit for substantial contribution toward noncovered fleets.
- Sec. 15012. Credit for alternative fuel infrastructure.
- Sec. 15013. Alternative fueled vehicle report.
- Sec. 15014. Allocation of incremental costs.

Subtitle B—Advanced Vehicles

- Sec. 15021. Definitions.
- Sec. 15022. Pilot program.
- Sec. 15023. Reports to Congress.
- Sec. 15024. Authorization of appropriations.

Subtitle C—Hydrogen Fuel Cell Heavy-Duty Vehicles

- Sec. 15031. Definition.
- Sec. 15032. Findings.
- Sec. 15033. Hydrogen fuel cell buses.
- Sec. 15034. Authorization of appropriations.

Subtitle D—Miscellaneous

- Sec. 15041. Railroad efficiency.
- Sec. 15042. Mobile emission reductions trading and crediting.
- Sec. 15043. Idle reduction technologies.
- Sec. 15044. Study of aviation fuel conservation and emissions.
- Sec. 15045. Diesel fueled vehicles.
- Sec. 15046. Waivers of alternative fueled vehicle fueling requirement.
- Sec. 15047. Total integrated thermal systems.
- Sec. 15048. Oil bypass filtration technology.
- Sec. 15049. Natural gas condensate study.
- Sec. 15050. Study on reducing petroleum consumption.
- Sec. 15051. Conserve by Bicycling Program.

TITLE VI—ELECTRICITY

Subtitle A—Transmission Capacity

- Sec. 16011. Transmission infrastructure improvement rulemaking.
- Sec. 16012. Siting of interstate electrical transmission facilities.
- Sec. 16013. Transmission technologies.

Subtitle B—Transmission Operation

- Sec. 16021. Open access transmission by certain utilities.
- Sec. 16022. Regional transmission organizations.
- Sec. 16023. Native load.

Subtitle C—Reliability

- Sec. 16031. Electric reliability standards.

Subtitle D—PUHCA Amendments

- Sec. 16041. Short title.
- Sec. 16042. Definitions.
- Sec. 16043. Repeal of the Public Utility Holding Company Act of 1935.
- Sec. 16044. Federal access to books and records.
- Sec. 16045. State access to books and records.
- Sec. 16046. Exemption authority.
- Sec. 16047. Affiliate transactions.
- Sec. 16048. Applicability.
- Sec. 16049. Effect on other regulations.
- Sec. 16050. Enforcement.
- Sec. 16051. Savings provisions.
- Sec. 16052. Implementation.
- Sec. 16053. Transfer of resources.
- Sec. 16054. Effective date.
- Sec. 16055. Authorization of appropriations.
- Sec. 16056. Conforming amendments to the Federal Power Act.

Subtitle E—PURPA Amendments

- Sec. 16061. Real-time pricing and time-of-use metering standards.
- Sec. 16062. Cogeneration and small power production purchase and sale requirements.
- Sec. 16063. Smart metering.

Subtitle F—Renewable Energy

- Sec. 16071. Net metering.
- Sec. 16072. Renewable energy production incentive.
- Sec. 16073. Renewable energy on Federal lands.
- Sec. 16074. Assessment of renewable energy resources.

Subtitle G—Market Transparency, Round Trip Trading Prohibition, and Enforcement

- Sec. 16081. Market transparency rules.
- Sec. 16082. Prohibition on round trip trading.
- Sec. 16083. Conforming changes.
- Sec. 16084. Enforcement.

Subtitle H—Consumer Protections

- Sec. 16091. Refund effective date.
- Sec. 16092. Jurisdiction over interstate sales.
- Sec. 16093. Consumer privacy.
- Sec. 16094. Unfair trade practices.

Subtitle I—Merger Review Reform and Accountability

- Sec. 16101. Merger review reform and accountability.

Subtitle J—Study of Economic Dispatch

- Sec. 16111. Study on the benefits of economic dispatch.

TITLE VII—MOTOR FUELS

Subtitle A—General Provisions

- Sec. 17101. Renewable content of motor vehicle fuel.
- Sec. 17102. Fuels safe harbor.
- Sec. 17103. Findings and MTBE transition assistance.
- Sec. 17104. Elimination of oxygen content requirement for reformulated gasoline.
- Sec. 17105. Analyses of motor vehicle fuel changes.
- Sec. 17106. Data collection.
- Sec. 17107. Fuel system requirements harmonization study.
- Sec. 17107A. Reducing the proliferation boutique fuels.
- Sec. 17108. Commercial byproducts from municipal solid waste loan guarantee program.

Subtitle B—MTBE Cleanup

- Sec. 17201. Funding for MTBE Contamination.

TITLE VIII—AUTOMOBILE EFFICIENCY

- Sec. 18001. Authorization of appropriations for implementation and enforcement of fuel economy standards.
- Sec. 18002. Study of feasibility and effects of reducing use of fuel for automobiles.

DIVISION B—SCIENCE

- Sec. 20001. Purposes.
- Sec. 20002. Goals.
- Sec. 20003. Definitions.

TITLE I—RESEARCH AND DEVELOPMENT

Subtitle A—Energy Efficiency

PART 1—AUTHORIZATION OF APPROPRIATIONS

- Sec. 21101. Energy efficiency.

PART 2—LIGHTING SYSTEMS

- Sec. 21111. Next Generation Lighting Initiative.

PART 3—BUILDINGS

- Sec. 21121. National Building Performance Initiative.
- Sec. 21122. Electric motor control technology.

PART 4—VEHICLES

- Sec. 21131. Definitions.
- Sec. 21132. Establishment of secondary electric vehicle battery use program.

PART 5—ENERGY EFFICIENCY SCIENCE INITIATIVE

- Sec. 21141. Energy Efficiency Science Initiative.

PART 6—ADVANCED ENERGY TECHNOLOGY TRANSFER CENTERS

- Sec. 21151. Advanced Energy Technology Transfer Centers.

Subtitle B—Distributed Energy and Electric Energy Systems

PART 1—AUTHORIZATION OF APPROPRIATIONS

- Sec. 21201. Distributed energy and electric energy systems.

PART 2—DISTRIBUTED POWER

- Sec. 21211. Strategy.
- Sec. 21212. High power density industry program.
- Sec. 21213. Micro-cogeneration energy technology.

PART 3—TRANSMISSION SYSTEMS

- Sec. 21221. Transmission infrastructure systems research, development, demonstration, and commercial application.

Subtitle C—Renewable Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 21301. Renewable energy.

PART 2—BIOENERGY

Sec. 21311. Bioenergy programs.

PART 3—MISCELLANEOUS PROJECTS

Sec. 21321. Miscellaneous projects.

Sec. 21322. Renewable energy in public buildings.

Subtitle D—Nuclear Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 21401. Nuclear energy.

PART 2—NUCLEAR ENERGY RESEARCH PROGRAMS

Sec. 21411. Nuclear energy research programs.

PART 3—ADVANCED FUEL RECYCLING

Sec. 21421. Advanced fuel recycling program.

PART 4—UNIVERSITY PROGRAMS

Sec. 21431. University nuclear science and engineering support.

PART 5—GEOLOGICAL ISOLATION OF SPENT FUEL

Sec. 21441. Geological isolation of spent fuel.

Subtitle E—Fossil Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 21501. Fossil energy.

PART 2—RESEARCH PROGRAMS

Sec. 21511. Fossil energy research programs.

Sec. 21512. Research and development for coal mining technologies.

PART 3—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES

Sec. 21521. Program authority.

Sec. 21522. Ultra-deepwater program.

Sec. 21523. Unconventional natural gas and other petroleum resources program.

Sec. 21524. Additional requirements for awards.

Sec. 21525. Advisory committees.

Sec. 21526. Limits on participation.

Sec. 21527. Fund.

Sec. 21528. Transfer of advanced oil and gas exploration and production technologies.

Sec. 21529. Sunset.

Sec. 21530. Definitions.

Subtitle F—Science

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 21601. Science.

PART 2—FUSION ENERGY SCIENCES

Sec. 21611. ITER.

Sec. 21612. Plan for fusion experiment.

Sec. 21613. Plan for fusion energy sciences program.

PART 3—SPALLATION NEUTRON SOURCE

Sec. 21621. Definition.

Sec. 21622. Report.

Sec. 21623. Limitations.

PART 4—MISCELLANEOUS

Sec. 21631. Facility and infrastructure support for nonmilitary energy laboratories.

Sec. 21632. Research regarding precious metal catalysis.

Sec. 21633. Nanotechnology research and development.

Sec. 21634. Advanced scientific computing for energy missions.

Sec. 21635. Nitrogen fixation.

Sec. 21636. Department of Energy Science and Technology Scholarship Program.

PART 5—GENOMES TO LIFE

Sec. 21641. Genomes to life.

Subtitle G—Energy and Environment

Sec. 21701. Authorization of appropriations.

Sec. 21702. United States-Mexico energy technology cooperation.

Sec. 21703. Waste reduction and use of alternatives.

Sec. 21704. Coal gasification.

Sec. 21705. Petroleum coke gasification.

Sec. 21706. Other biopower and bioenergy.

Sec. 21707. Coal technology loan.

Sec. 21708. Fuel cell test center.

Sec. 21709. Fuel cell transit bus demonstration.

Subtitle H—Management

Sec. 21801. Availability of funds.

Sec. 21802. Cost sharing.

Sec. 21803. Merit review of proposals.

Sec. 21804. External technical review of departmental programs.

Sec. 21805. Improved coordination of technology transfer activities.

Sec. 21806. Small business advocacy and assistance.

Sec. 21807. Mobility of scientific and technical personnel.

Sec. 21808. National Academy of Sciences report.

Sec. 21809. Outreach.

Sec. 21810. Limits on use of funds.

Sec. 21811. Reprogramming.

- Sec. 21812. Construction with other laws.
- Sec. 21813. University collaboration.
- Sec. 21814. Federal laboratory educational partners.
- Sec. 21815. Interagency cooperation.

TITLE II—DEPARTMENT OF ENERGY MANAGEMENT

- Sec. 22001. External regulation of Department of Energy.
- Sec. 22002. Improved coordination and management of civilian science and technology programs.
- Sec. 22003. Report on equal employment opportunity practices.
- Sec. 22004. Sense of Congress.

TITLE III—CLEAN SCHOOL BUSES

- Sec. 23001. Establishment of pilot program.
- Sec. 23002. Fuel cell bus development and demonstration program.
- Sec. 23003. Diesel retrofit program.
- Sec. 23004. Authorization of appropriations.

DIVISION C—RESOURCES

TITLE I—INDIAN ENERGY

- Sec. 30101. Indian energy.

TITLE II—OIL AND GAS

- Sec. 30201. Program on oil and gas royalties in-kind.
- Sec. 30202. Clarification of fair market rental value determinations for public lands and Forest Service rights-of-way.
- Sec. 30203. USGS estimates of oil and gas resources underlying onshore Federal lands.
- Sec. 30204. Royalty incentives for certain offshore areas.
- Sec. 30205. Marginal property production incentives.
- Sec. 30206. Federal onshore oil and gas leasing and permitting practices.
- Sec. 30207. Management of Federal oil and gas leasing programs.
- Sec. 30208. Consultation regarding oil and gas leasing on public lands.
- Sec. 30209. Oil and gas lease acreage limitations.
- Sec. 30210. Federal reimbursement for orphan well reclamation.
- Sec. 30211. Preservation of geological and geophysical data.
- Sec. 30212. Compliance with Executive Order No. 13211; actions concerning regulations that significantly affect energy supply, distribution, or use.
- Sec. 30213. Reimbursement for costs of NEPA analyses, documentation, and studies.
- Sec. 30214. Alternate energy-related uses on the Outer Continental Shelf.
- Sec. 30215. Deadline for decision on appeals of consistency determinations under the Coastal Zone Management Act of 1972.
- Sec. 30216. Task force on energy project streamlining.
- Sec. 30217. Pilot program on Northern Rocky Mountains energy resource management.
- Sec. 30218. Energy development facilitator study.
- Sec. 30219. Combined hydrocarbon leasing.
- Sec. 30220. Royalty payments under leases under the Outer Continental Shelf Lands Act.

TITLE III—BIOMASS ENERGY

- Sec. 30301. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, petroleum-based product substitutes, and other commercial purposes.

TITLE IV—ARCTIC COASTAL PLAIN DOMESTIC ENERGY

- Sec. 30401. Short title.
 Sec. 30402. Definitions.
 Sec. 30403. Leasing program for lands within the Coastal Plain.
 Sec. 30404. Lease sales.
 Sec. 30405. Grant of leases by the Secretary.
 Sec. 30406. Lease terms and conditions.
 Sec. 30407. Coastal Plain environmental protection.
 Sec. 30408. Expedited judicial review.
 Sec. 30409. Federal and State distribution of revenues.
 Sec. 30410. Rights-of-way across the Coastal Plain.
 Sec. 30411. Conveyance.
 Sec. 30412. Local government impact aid and community service assistance.

TITLE V—HYDROPOWER

- Sec. 30501. Study and report on increasing electric power production capability of existing facilities.
 Sec. 30502. Study and implementation of increased operational efficiencies in hydroelectric power projects.
 Sec. 30503. Shift of project loads to off-peak periods.

TITLE VI—GEOTHERMAL ENERGY

- Sec. 30601. Competitive lease sale requirements.
 Sec. 30602. Special provisions regarding direct use of low temperature geothermal energy resources.
 Sec. 30603. Royalties and near-term production incentives.
 Sec. 30604. Consultation regarding geothermal leasing and permitting on public lands.
 Sec. 30605. Review and report to Congress.
 Sec. 30606. Reimbursement for costs of NEPA analyses, documentation, and studies.
 Sec. 30607. Assessment of geothermal energy potential.
 Sec. 30608. Cooperative or unit plans.
 Sec. 30609. Royalty on byproducts.
 Sec. 30610. Repeal of authorities of Secretary to readjust terms, conditions, rentals, and royalties.
 Sec. 30611. Crediting of rental toward royalty.
 Sec. 30612. Lease duration and work commitment requirements.
 Sec. 30613. Advanced royalties required for suspension of production.
 Sec. 30614. Annual rental.

TITLE VII—COAL

- Sec. 30701. Short title.
 Sec. 30702. Repeal of the 160-acre limitation for coal leases.
 Sec. 30703. Mining plans.
 Sec. 30704. Payment of advance royalties under coal leases.

- Sec. 30705. Elimination of deadline for submission of coal lease operation and reclamation plan.
- Sec. 30706. Amendments relating to financial assurances with respect to bonus bids.
- Sec. 30707. Inventory requirement.
- Sec. 30708. Application of amendments.

TITLE VIII—INSULAR AREAS ENERGY SECURITY

- Sec. 30801. Insular areas energy security.

TITLE IX—MISCELLANEOUS PROVISIONS

- Sec. 30901. Report on energy facility rights-of-way and corridors on Federal lands.
- Sec. 30902. Electricity transmission line right-of-way, Cleveland National Forest and adjacent public lands, California.
- Sec. 30903. Consultation regarding energy rights-of-way on public lands.
- Sec. 30904. Enhancing energy efficiency in management of Federal lands.
- Sec. 30905. Permitting of wind energy development projects on public lands.
- Sec. 30906. Sense of the Congress regarding generation capacity of electricity from renewable energy resources on public lands.
- Sec. 30907. Assessment of ocean thermal energy resources.
- Sec. 30908. Sense of the Congress regarding development of minerals under Padre Island National Seashore.
- Sec. 30909. Encouraging prohibition of off-shore drilling in the Great Lakes.

DIVISION D—TAX

- Sec. 40001. Short title; etc.

TITLE I—CONSERVATION

- Sec. 41001. Credit for residential solar energy property.
- Sec. 41002. Extension and expansion of credit for electricity produced from renewable resources.
- Sec. 41003. Credit for qualified fuel cell power plants.
- Sec. 41004. Credit for energy efficiency improvements to existing homes.
- Sec. 41005. Business credit for construction of new energy efficient home.
- Sec. 41006. Energy credit for combined heat and power system property.
- Sec. 41007. New nonrefundable personal credits allowed against regular and minimum taxes.
- Sec. 41008. Repeal of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
- Sec. 41009. Reduced motor fuel excise tax on certain mixtures of diesel fuel.
- Sec. 41010. Repeal of phaseouts for qualified electric vehicle credit and deduction for clean fuel-vehicles.
- Sec. 41011. Alternative motor vehicle credit.

TITLE II—RELIABILITY

- Sec. 42001. Natural gas gathering lines treated as 7-year property.
- Sec. 42002. Natural gas distribution lines treated as 15-year property.
- Sec. 42003. Electric transmission property treated as 15-year property.
- Sec. 42004. Expensing of capital costs incurred in complying with environmental protection agency sulfur regulations.
- Sec. 42005. Credit for production of low sulfur diesel fuel.

- Sec. 42006. Determination of small refiner exception to oil depletion deduction.
- Sec. 42007. Sales or dispositions to implement Federal energy regulatory commission or State electric restructuring policy.
- Sec. 42008. Modifications to special rules for nuclear decommissioning costs.
- Sec. 42009. Treatment of certain income of cooperatives.
- Sec. 42010. Arbitrage rules not to apply to prepayments for natural gas.

TITLE III—PRODUCTION

- Sec. 43001. Oil and gas from marginal wells.
- Sec. 43002. Temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production.
- Sec. 43003. Amortization of delay rental payments.
- Sec. 43004. Amortization of geological and geophysical expenditures.
- Sec. 43005. Extension and modification of credit for producing fuel from a nonconventional source.
- Sec. 43006. Business related energy credits allowed against regular and minimum tax.
- Sec. 43007. Temporary repeal of alternative minimum tax preference for intangible drilling costs.
- Sec. 43008. Allowance of enhanced recovery credit against the alternative minimum tax.

TITLE IV—CORPORATE EXPATRIATION

- Sec. 44001. Tax treatment of corporate expatriation.
- Sec. 44002. Expressing the sense of the Congress that tax reform is needed to address the issue of corporate expatriation.

DIVISION E—CLEAN COAL

- Sec. 50001. Authorization of appropriations.
- Sec. 50002. Project criteria.
- Sec. 50003. Report.
- Sec. 50004. Clean coal Centers of Excellence.

DIVISION F—HYDROGEN

- Sec. 60001. Definitions.
- Sec. 60002. Plan.
- Sec. 60003. Program.
- Sec. 60004. Interagency task force.
- Sec. 60005. Advisory Committee.
- Sec. 60006. External review.
- Sec. 60007. Miscellaneous provisions.
- Sec. 60008. Authorization of appropriations.
- Sec. 60009. Fuel cell program at National Parks.
- Sec. 60010. Advanced power system technology incentive program.

DIVISION G—HOUSING

- Sec. 70001. Capacity building for energy-efficient, affordable housing.
- Sec. 70002. Increase of CDBG public services cap for energy conservation and efficiency activities.
- Sec. 70003. FHA mortgage insurance incentives for energy efficient housing.
- Sec. 70004. Public Housing Capital Fund.

Sec. 70005. Grants for energy-conserving improvements for assisted housing.
 Sec. 70006. North American Development Bank.
 Sec. 70007. Energy-efficient appliances.
 Sec. 70008. Energy efficiency standards.
 Sec. 70009. Energy strategy for HUD.

1 SEC. 2. ENERGY POLICY.

2 It is the sense of the Congress that the United States
 3 should take all actions necessary in the areas of conserva-
 4 tion, efficiency, alternative source, technology develop-
 5 ment, and domestic production to reduce the United
 6 States dependence on foreign energy sources from 58 per-
 7 cent to 45 percent by January 1, 2013.

8 **DIVISION A—ENERGY AND**
 9 **COMMERCE**

10 **SEC. 10001. SHORT TITLE.**

11 This division may be cited as the “Energy Policy Act
 12 of 2003”.

13 **TITLE I—ENERGY**
 14 **CONSERVATION**
 15 **Subtitle A—Federal Leadership in**
 16 **Energy Conservation**

17 **SEC. 11001. ENERGY AND WATER SAVING MEASURES IN**
 18 **CONGRESSIONAL BUILDINGS.**

19 (a) IN GENERAL.—Part 3 of title V of the National
 20 Energy Conservation Policy Act is amended by adding at
 21 the end:

1 **“SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN**
2 **CONGRESSIONAL BUILDINGS.**

3 “(a) IN GENERAL.—The Architect of the Capitol—

4 “(1) shall develop, update, and implement a
5 cost-effective energy conservation and management
6 plan (referred to in this section as the ‘plan’) for all
7 facilities administered by the Congress (referred to
8 in this section as ‘congressional buildings’) to meet
9 the energy performance requirements for Federal
10 buildings established under section 543(a)(1); and

11 “(2) shall submit the plan to Congress, not
12 later than 180 days after the date of enactment of
13 this section.

14 “(b) PLAN REQUIREMENTS.—The plan shall in-
15 clude—

16 “(1) a description of the life cycle cost analysis
17 used to determine the cost-effectiveness of proposed
18 energy efficiency projects;

19 “(2) a schedule of energy surveys to ensure
20 complete surveys of all congressional buildings every
21 5 years to determine the cost and payback period of
22 energy and water conservation measures;

23 “(3) a strategy for installation of life cycle cost-
24 effective energy and water conservation measures;

1 “(4) the results of a study of the costs and ben-
2 efits of installation of submetering in congressional
3 buildings; and

4 “(5) information packages and ‘how-to’ guides
5 for each Member and employing authority of Con-
6 gress that detail simple, cost-effective methods to
7 save energy and taxpayer dollars in the workplace.

8 “(c) ANNUAL REPORT.—The Architect shall submit
9 to Congress annually a report on congressional energy
10 management and conservation programs required under
11 this section that describes in detail—

12 “(1) energy expenditures and savings estimates
13 for each facility;

14 “(2) energy management and conservation
15 projects; and

16 “(3) future priorities to ensure compliance with
17 this section.”.

18 (b) TABLE OF CONTENTS AMENDMENT.—The table
19 of contents of the National Energy Conservation Policy
20 Act is amended by adding at the end of the items relating
21 to part 3 of title V the following new item:

“Sec. 552. Energy and water savings measures in congressional buildings.”.

22 (c) REPEAL.—Section 310 of the Legislative Branch
23 Appropriations Act, 1999 (40 U.S.C. 166i), is repealed.

24 (d) ENERGY INFRASTRUCTURE.—The Architect of
25 the Capitol, building on the Master Plan Study completed

1 in July 2000, shall commission a study to evaluate the
2 energy infrastructure of the Capital Complex to determine
3 how the infrastructure could be augmented to become
4 more energy efficient, using unconventional and renewable
5 energy resources, in a way that would enable the Complex
6 to have reliable utility service in the event of power fluc-
7 tuations, shortages, or outages.

8 (e) AUTHORIZATION.—There are authorized to be ap-
9 propriated to the Architect of the Capitol to carry out sub-
10 section (d), not more than \$2,000,000 for fiscal years
11 after the enactment of this Act.

12 **SEC. 11002. ENERGY MANAGEMENT REQUIREMENTS.**

13 (a) ENERGY REDUCTION GOALS.—

14 (1) AMENDMENT.—Section 543(a)(1) of the
15 National Energy Conservation Policy Act (42 U.S.C.
16 8253(a)(1)) is amended by striking “its Federal
17 buildings so that” and all that follows through the
18 end and inserting “the Federal buildings of the
19 agency (including each industrial or laboratory facil-
20 ity) so that the energy consumption per gross square
21 foot of the Federal buildings of the agency in fiscal
22 years 2004 through 2013 is reduced, as compared
23 with the energy consumption per gross square foot
24 of the Federal buildings of the agency in fiscal year

1 2001, by the percentage specified in the following
2 table:

“Fiscal Year	Percentage reduction
2004	2
2005	4
2006	6
2007	8
2008	10
2009	12
2010	14
2011	16
2012	18
2013	20.”.

3 (2) REPORTING BASELINE.—The energy reduc-
4 tion goals and baseline established in paragraph (1)
5 of section 543(a) of the National Energy Conserva-
6 tion Policy Act, as amended by paragraph (1) of this
7 subsection, supersede all previous goals and base-
8 lines under such paragraph, and related reporting
9 requirements.

10 (b) REVIEW AND REVISION OF ENERGY PERFORM-
11 ANCE REQUIREMENT.—Section 543(a) of the National
12 Energy Conservation Policy Act (42 U.S.C. 8253(a)) is
13 further amended by adding at the end the following:

14 “(3) Not later than December 31, 2012, the Sec-
15 retary shall review the results of the implementation of
16 the energy performance requirement established under
17 paragraph (1) and submit to Congress recommendations
18 concerning energy performance requirements for fiscal
19 years 2014 through 2023.”.

1 (c) EXCLUSIONS.—Section 543(c)(1) of the National
2 Energy Conservation Policy Act (42 U.S.C. 8253(c)(1))
3 is amended by striking “An agency may exclude” and all
4 that follows through the end and inserting “(A) An agency
5 may exclude, from the energy performance requirement
6 for a fiscal year established under subsection (a) and the
7 energy management requirement established under sub-
8 section (b), any Federal building or collection of Federal
9 buildings, if the head of the agency finds that—

10 “(i) compliance with those requirements would
11 be impracticable;

12 “(ii) the agency has completed and submitted
13 all federally required energy management reports;

14 “(iii) the agency has achieved compliance with
15 the energy efficiency requirements of this Act, the
16 Energy Policy Act of 1992, Executive orders, and
17 other Federal law; and

18 “(iv) the agency has implemented all prac-
19 ticable, life cycle cost-effective projects with respect
20 to the Federal building or collection of Federal
21 buildings to be excluded.

22 “(B) A finding of impracticability under subpara-
23 graph (A)(i) shall be based on—

1 “(i) the energy intensiveness of activities car-
2 ried out in the Federal building or collection of Fed-
3 eral buildings; or

4 “(ii) the fact that the Federal building or col-
5 lection of Federal buildings is used in the perform-
6 ance of a national security function.”.

7 (d) REVIEW BY SECRETARY.—Section 543(c)(2) of
8 the National Energy Conservation Policy Act (42 U.S.C.
9 8253(c)(2)) is amended—

10 (1) by striking “impracticability standards” and
11 inserting “standards for exclusion”; and

12 (2) by striking “a finding of impracticability”
13 and inserting “the exclusion”.

14 (e) CRITERIA.—Section 543(c) of the National En-
15 ergy Conservation Policy Act (42 U.S.C. 8253(c)) is fur-
16 ther amended by adding at the end the following:

17 “(3) Not later than 180 days after the date of enact-
18 ment of this paragraph, the Secretary shall issue guide-
19 lines that establish criteria for exclusions under paragraph
20 (1).”.

21 (f) RETENTION OF ENERGY SAVINGS.—Section 546
22 of the National Energy Conservation Policy Act (42
23 U.S.C. 8256) is amended by adding at the end the fol-
24 lowing new subsection:

1 “(e) RETENTION OF ENERGY SAVINGS.—An agency
2 may retain any funds appropriated to that agency for en-
3 ergy expenditures, at buildings subject to the requirements
4 of section 543(a) and (b), that are not made because of
5 energy savings. Except as otherwise provided by law, such
6 funds may be used only for energy efficiency or unconven-
7 tional and renewable energy resources projects.”.

8 (g) REPORTS.—Section 548(b) of the National En-
9 ergy Conservation Policy Act (42 U.S.C. 8258(b)) is
10 amended—

11 (1) in the subsection heading, by inserting
12 “THE PRESIDENT AND” before “CONGRESS”; and

13 (2) by inserting “President and” before “Con-
14 gress”.

15 (h) CONFORMING AMENDMENT.—Section 550(d) of
16 the National Energy Conservation Policy Act (42 U.S.C.
17 8258b(d)) is amended in the second sentence by striking
18 “the 20 percent reduction goal established under section
19 543(a) of the National Energy Conservation Policy Act
20 (42 U.S.C. 8253(a)).” and inserting “each of the energy
21 reduction goals established under section 543(a).”.

1 **SEC. 11003. ENERGY USE MEASUREMENT AND ACCOUNT-**
2 **ABILITY.**

3 Section 543 of the National Energy Conservation
4 Policy Act (42 U.S.C. 8253) is further amended by adding
5 at the end the following:

6 “(e) METERING OF ENERGY USE.—

7 “(1) DEADLINE.—By October 1, 2010, in ac-
8 cordance with guidelines established by the Sec-
9 retary under paragraph (2), all Federal buildings
10 shall, for the purposes of efficient use of energy and
11 reduction in the cost of electricity used in such
12 buildings, be metered or submetered. Each agency
13 shall use, to the maximum extent practicable, ad-
14 vanced meters or advanced metering devices that
15 provide data at least daily and that measure at least
16 hourly consumption of electricity in the Federal
17 buildings of the agency. Such data shall be incor-
18 porated into existing Federal energy tracking sys-
19 tems and made available to Federal facility energy
20 managers.

21 “(2) GUIDELINES.—

22 “(A) IN GENERAL.—Not later than 180
23 days after the date of enactment of this sub-
24 section, the Secretary, in consultation with the
25 Department of Defense, the General Services
26 Administration, representatives from the meter-

1 ing industry, utility industry, energy services in-
2 dustry, energy efficiency industry, national lab-
3 oratories, universities, and Federal facility en-
4 ergy managers, shall establish guidelines for
5 agencies to carry out paragraph (1).

6 “(B) REQUIREMENTS FOR GUIDELINES.—

7 The guidelines shall—

8 “(i) take into consideration—

9 “(I) the cost of metering and
10 submetering and the reduced cost of
11 operation and maintenance expected
12 to result from metering and sub-
13 metering;

14 “(II) the extent to which meter-
15 ing and submetering are expected to
16 result in increased potential for en-
17 ergy management, increased potential
18 for energy savings and energy effi-
19 ciency improvement, and cost and en-
20 ergy savings due to utility contract
21 aggregation; and

22 “(III) the measurement and
23 verification protocols of the Depart-
24 ment of Energy;

1 “(ii) include recommendations con-
2 cerning the amount of funds and the num-
3 ber of trained personnel necessary to gath-
4 er and use the metering information to
5 track and reduce energy use;

6 “(iii) establish priorities for types and
7 locations of buildings to be metered and
8 submetered based on cost-effectiveness and
9 a schedule of one or more dates, not later
10 than 1 year after the date of issuance of
11 the guidelines, on which the requirements
12 specified in paragraph (1) shall take effect;
13 and

14 “(iv) establish exclusions from the re-
15 quirements specified in paragraph (1)
16 based on the de minimis quantity of energy
17 use of a Federal building, industrial proc-
18 ess, or structure.

19 “(3) PLAN.—No later than 6 months after the
20 date guidelines are established under paragraph (2),
21 in a report submitted by the agency under section
22 548(a), each agency shall submit to the Secretary a
23 plan describing how the agency will implement the
24 requirements of paragraph (1), including (A) how
25 the agency will designate personnel primarily respon-

8 Section 305(a) of the Energy Conservation and Pro-
9 duction Act (42 U.S.C. 6834(a)) is amended—

13 (2) by adding at the end the following:

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that, if cost-effective, for new Federal buildings—

HR 6 PCS

1 version of the International Energy Conserva-
2 tion Code, as appropriate; and

3 “(ii) sustainable design principles are ap-
4 plied to the siting, design, and construction of
5 all new and replacement buildings.

6 “(B) ADDITIONAL REVISIONS.—Not later than
7 1 year after the date of approval of amendments to
8 ASHRAE Standard 90.1 or the 2000 International
9 Energy Conservation Code, the Secretary of Energy
10 shall determine, based on the cost-effectiveness of
11 the requirements under the amendments, whether
12 the revised standards established under this para-
13 graph should be updated to reflect the amendments.

14 “(C) STATEMENT ON COMPLIANCE OF NEW
15 BUILDINGS.—In the budget request of the Federal
16 agency for each fiscal year and each report sub-
17 mitted by the Federal agency under section 548(a)
18 of the National Energy Conservation Policy Act (42
19 U.S.C. 8258(a)), the head of each Federal agency
20 shall include—

21 “(i) a list of all new Federal buildings
22 owned, operated, or controlled by the Federal
23 agency; and

1 “(ii) a statement concerning whether the
 2 Federal buildings meet or exceed the revised
 3 standards established under this paragraph.”.

4 **SEC. 11005. PROCUREMENT OF ENERGY EFFICIENT PROD-**
 5 **UCTS.**

6 (a) REQUIREMENTS.—Part 3 of title V of the Na-
 7 tional Energy Conservation Policy Act is amended by add-
 8 ing at the end the following:

9 **“SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFI-**
 10 **CIENT PRODUCTS.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) ENERGY STAR PRODUCT.—The term ‘En-
 13 ergy Star product’ means a product that is rated for
 14 energy efficiency under an Energy Star program.

15 “(2) ENERGY STAR PROGRAM.—The term ‘En-
 16 ergy Star program’ means the program established
 17 by section 324A of the Energy Policy and Conserva-
 18 tion Act.

19 “(3) EXECUTIVE AGENCY.—The term ‘executive
 20 agency’ has the meaning given the term in section
 21 4 of the Office of Federal Procurement Policy Act
 22 (41 U.S.C. 403).

23 “(4) FEMP DESIGNATED PRODUCT.—The term
 24 ‘FEMP designated product’ means a product that is
 25 designated under the Federal Energy Management

1 Program of the Department of Energy as being
2 among the highest 25 percent of equivalent products
3 for energy efficiency.

4 “(b) PROCUREMENT OF ENERGY EFFICIENT PROD-
5 UCTS.—

6 “(1) REQUIREMENT.—To meet the require-
7 ments of an executive agency for an energy con-
8 suming product, the head of the executive agency
9 shall, except as provided in paragraph (2), procure—

10 “(A) an Energy Star product; or

11 “(B) a FEMP designated product.

12 “(2) EXCEPTIONS.—The head of an executive
13 agency is not required to procure an Energy Star
14 product or FEMP designated product under para-
15 graph (1) if the head of the executive agency finds
16 in writing that—

17 “(A) an Energy Star product or FEMP
18 designated product is not cost-effective over the
19 life of the product taking energy cost savings
20 into account; or

21 “(B) no Energy Star product or FEMP
22 designated product is reasonably available that
23 meets the functional requirements of the execu-
24 tive agency.

1 “(3) PROCUREMENT PLANNING.—The head of
2 an executive agency shall incorporate into the speci-
3 fications for all procurements involving energy con-
4 suming products and systems, including guide speci-
5 fications, project specifications, and construction,
6 renovation, and services contracts that include provi-
7 sion of energy consuming products and systems, and
8 into the factors for the evaluation of offers received
9 for the procurement, criteria for energy efficiency
10 that are consistent with the criteria used for rating
11 Energy Star products and for rating FEMP des-
12 ignated products.

13 “(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN
14 FEDERAL CATALOGS.—Energy Star products and FEMP
15 designated products shall be clearly identified and promi-
16 nently displayed in any inventory or listing of products
17 by the General Services Administration or the Defense Lo-
18 gistics Agency. The General Services Administration or
19 the Defense Logistics Agency shall supply only Energy
20 Star products or FEMP designated products for all prod-
21 uct categories covered by the Energy Star program or the
22 Federal Energy Management Program, except in cases
23 where the agency ordering a product specifies in writing
24 that no Energy Star product or FEMP designated product
25 is available to meet the buyer’s functional requirements,

1 or that no Energy Star product or FEMP designated
 2 product is cost-effective for the intended application over
 3 the life of the product, taking energy cost savings into ac-
 4 count.

5 “(d) DESIGNATION OF ELECTRIC MOTORS.—In the
 6 case of electric motors of 1 to 500 horsepower, agencies
 7 shall select only premium efficient motors that meet a
 8 standard designated by the Secretary. The Secretary shall
 9 designate such a standard within 120 days after the date
 10 of the enactment of this section, after considering the rec-
 11 ommendations of associated electric motor manufacturers
 12 and energy efficiency groups.

13 “(e) REGULATIONS.—Not later than 180 days after
 14 the date of the enactment of this section, the Secretary
 15 shall issue guidelines to carry out this section.”.

16 (b) CONFORMING AMENDMENT.—The table of con-
 17 tents in section 101(b) of the National Energy Conserva-
 18 tion Policy Act (42 U.S.C. 8201 note), as amended by sec-
 19 tion 11001(b) of this division, is further amended by in-
 20 serting after the item relating to section 552 the following:

“Sec. 553. Federal procurement of energy efficient products.”.

21 **SEC. 11006. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

22 (a) PERMANENT EXTENSION.—Section 801(c) of the
 23 National Energy Conservation Policy Act (42 U.S.C.
 24 8287(c)) is repealed.

1 (b) REPLACEMENT FACILITIES.—Section 801(a) of
2 the National Energy Conservation Policy Act (42 U.S.C.
3 8287(a)) is amended by adding at the end the following
4 new paragraph:

5 “(3)(A) In the case of an energy savings con-
6 tract or energy savings performance contract pro-
7 viding for energy savings through the construction
8 and operation of one or more buildings or facilities
9 to replace one or more existing buildings or facilities,
10 benefits ancillary to the purpose of such contract
11 under paragraph (1) may include savings resulting
12 from reduced costs of operation and maintenance at
13 such replacement buildings or facilities when com-
14 pared with costs of operation and maintenance at
15 the buildings or facilities being replaced, established
16 through a methodology set forth in the contract.

17 “(B) Notwithstanding paragraph (2)(B), aggre-
18 gate annual payments by an agency under an energy
19 savings contract or energy savings performance con-
20 tract referred to in subparagraph (A) may take into
21 account (through the procedures developed pursuant
22 to this section) savings resulting from reduced costs
23 of operation and maintenance as described in that
24 subparagraph.”.

1 (c) ENERGY SAVINGS.—Section 804(2) of the Na-
2 tional Energy Conservation Policy Act (42 U.S.C.
3 8287c(2)) is amended to read as follows:

4 “(2) The term ‘energy savings’ means—

5 “(A) a reduction in the cost of energy or
6 water, from a base cost established through a
7 methodology set forth in the contract, used in
8 an existing federally owned building or build-
9 ings or other federally owned facilities as a re-
10 sult of—

11 “(i) the lease or purchase of operating
12 equipment, improvements, altered oper-
13 ation and maintenance, or technical serv-
14 ices;

15 “(ii) the increased efficient use of ex-
16 isting energy sources by cogeneration or
17 heat recovery, excluding any cogeneration
18 process for other than a federally owned
19 building or buildings or other federally
20 owned facilities; or

21 “(iii) the increased efficient use of ex-
22 isting water sources; or

23 “(B) in the case of a replacement building
24 or facility described in section 801(a)(3), a re-
25 duction in the cost of energy, from a base cost

1 established through a methodology set forth in
2 the contract, that would otherwise be utilized in
3 one or more existing federally owned buildings
4 or other federally owned facilities by reason of
5 the construction and operation of the replace-
6 ment building or facility.”.

7 (d) ENERGY SAVINGS CONTRACT.—Section 804(3) of
8 the National Energy Conservation Policy Act (42 U.S.C.
9 8287c(3)) is amended to read as follows:

10 “(3) The terms ‘energy savings contract’ and
11 ‘energy savings performance contract’ mean a con-
12 tract which provides for—

13 “(A) the performance of services for the
14 design, acquisition, installation, testing, oper-
15 ation, and, where appropriate, maintenance and
16 repair, of an identified energy or water con-
17 servation measure or series of measures at one
18 or more locations; or

19 “(B) energy savings through the construc-
20 tion and operation of one or more buildings or
21 facilities to replace one or more existing build-
22 ings or facilities.

23 Such contracts shall, with respect to an agency facil-
24 ity that is a public building as such term is defined
25 in section 13(1) of the Public Buildings Act of 1959

1 (40 U.S.C. 3301), be in compliance with the pro-
2 spectus requirements and procedures of section 7 of
3 the Public Buildings Act of 1959 (40 U.S.C.
4 3307).”.

5 (e) ENERGY OR WATER CONSERVATION MEASURE.—
6 Section 804(4) of the National Energy Conservation Pol-
7 icy Act (42 U.S.C. 8287c(4)) is amended to read as fol-
8 lows:

9 “(4) The term ‘energy or water conservation
10 measure’ means—

11 “(A) an energy conservation measure, as
12 defined in section 551(4) (42 U.S.C. 8259(4));
13 or

14 “(B) a water conservation measure that
15 improves water efficiency, is life cycle cost-effec-
16 tive, and involves water conservation, water re-
17 cycling or reuse, more efficient treatment of
18 wastewater or stormwater, improvements in op-
19 eration or maintenance efficiencies, retrofit ac-
20 tivities, or other related activities, not at a Fed-
21 eral hydroelectric facility.”.

22 (f) REVIEW.—Within 180 days after the date of the
23 enactment of this section, the Secretary of Energy shall
24 complete a review of the Energy Savings Performance
25 Contract program to identify statutory, regulatory, and

1 administrative obstacles that prevent Federal agencies
2 from fully utilizing the program. In addition, this review
3 shall identify all areas for increasing program flexibility
4 and effectiveness, including audit and measurement
5 verification requirements, accounting for energy use in de-
6 termining savings, contracting requirements, and energy
7 efficiency services covered. The Secretary shall report
8 these findings to Congress, and shall implement identified
9 administrative and regulatory changes to increase pro-
10 gram flexibility and effectiveness to the extent that such
11 changes are consistent with statutory authority.

12 **SEC. 11007. VOLUNTARY COMMITMENTS TO REDUCE INDUS-**
13 **TRIAL ENERGY INTENSITY.**

14 (a) VOLUNTARY AGREEMENTS.—The Secretary of
15 Energy shall enter into voluntary agreements with one or
16 more persons in industrial sectors that consume signifi-
17 cant amounts of primary energy per unit of physical out-
18 put to reduce the energy intensity of their production ac-
19 tivities.

20 (b) GOAL.—Voluntary agreements under this section
21 shall have a goal of reducing energy intensity by not less
22 than 2.5 percent each year from 2004 through 2014.

23 (c) RECOGNITION.—The Secretary of Energy, in co-
24 operation with the Administrator of the Environmental
25 Protection Agency and other appropriate Federal agen-

1 cies, shall develop mechanisms to recognize and publicize
 2 the achievements of participants in voluntary agreements
 3 under this section.

4 (d) DEFINITION.—In this section, the term “energy
 5 intensity” means the primary energy consumed per unit
 6 of physical output in an industrial process.

7 (e) TECHNICAL ASSISTANCE.—An entity that enters
 8 into an agreement under this section and continues to
 9 make a good faith effort to achieve the energy efficiency
 10 goals specified in the agreement shall be eligible to receive
 11 from the Secretary a grant or technical assistance as ap-
 12 propriate to assist in the achievement of those goals.

13 (f) REPORT.—Not later than June 30, 2010 and
 14 June 30, 2014, the Secretary shall submit to Congress a
 15 report that evaluates the success of the voluntary agree-
 16 ments, with independent verification of a sample of the
 17 energy savings estimates provided by participating firms.

18 **SEC. 11008. FEDERAL AGENCY PARTICIPATION IN DEMAND**

19 **REDUCTION PROGRAMS.**

20 Section 546(c) of the National Energy Conservation
 21 Policy Act (42 U.S.C. 8256(c)) is amended by adding at
 22 the end of the following new paragraph:

23 “(6) Federal agencies are encouraged to participate
 24 in State or regional demand side reduction programs. The
 25 availability of such programs, including measures employ-

1 ing onsite generation, and the savings resulting from such
2 participation, should be included in the evaluation of en-
3 ergy options for Federal facilities.”.

4 **SEC. 11009. ADVANCED BUILDING EFFICIENCY TESTBED.**

5 (a) ESTABLISHMENT.—The Secretary of Energy, in
6 consultation with the Administrator of the General Serv-
7 ices Administration, shall establish an Advanced Building
8 Efficiency Testbed program for the development, testing,
9 and demonstration of advanced engineering systems, com-
10 ponents, and materials to enable innovations in building
11 technologies. The program shall evaluate efficiency con-
12 cepts for government and industry buildings, and dem-
13 onstrate the ability of next generation buildings to support
14 individual and organizational productivity and health as
15 well as flexibility and technological change to improve en-
16 vironmental sustainability. Such program shall com-
17 plement and not duplicate existing national programs.

18 (b) PARTICIPANTS.—The program established under
19 subsection (a) shall be led by a university with the ability
20 to combine the expertise from numerous academic fields
21 including, at a minimum, intelligent workplaces and ad-
22 vanced building systems and engineering, electrical and
23 computer engineering, computer science, architecture,
24 urban design, and environmental and mechanical engi-
25 neering. Such university shall partner with other univer-

1 sities and entities who have established programs and the
 2 capability of advancing innovative building efficiency tech-
 3 nologies.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 5 are authorized to be appropriated to the Secretary of En-
 6 ergy to carry out this section \$6,000,000 for each of the
 7 fiscal years 2004 through 2006, to remain available until
 8 expended. For any fiscal year in which funds are expended
 9 under this section, the Secretary shall provide one-third
 10 of the total amount to the lead university described in sub-
 11 section (b), and provide the remaining two-thirds to the
 12 other participants referred to in subsection (b) on an equal
 13 basis.

14 **SEC. 11010. INCREASED USE OF RECOVERED MINERAL**
 15 **COMPONENT IN FEDERALLY FUNDED**
 16 **PROJECTS INVOLVING PROCUREMENT OF**
 17 **CEMENT OR CONCRETE.**

18 (a) AMENDMENT.—Subtitle F of the Solid Waste
 19 Disposal Act (42 U.S.C. 6961 et seq.) is amended by add-
 20 ing at the end the following new section:

21 “INCREASED USE OF RECOVERED MINERAL COMPONENT
 22 IN FEDERALLY FUNDED PROJECTS INVOLVING PRO-
 23 CUREMENT OF CEMENT OR CONCRETE

24 “SEC. 6005. (a) DEFINITIONS.—In this section:

25 “(1) AGENCY HEAD.—The term ‘agency head’
 26 means—

1 “(A) the Secretary of Transportation; and

2 “(B) the head of each other Federal agen-
3 cy that on a regular basis procures, or provides
4 Federal funds to pay or assist in paying the
5 cost of procuring, material for cement or con-
6 crete projects.

7 “(2) CEMENT OR CONCRETE PROJECT.—The
8 term ‘cement or concrete project’ means a project
9 for the construction or maintenance of a highway or
10 other transportation facility or a Federal, State, or
11 local government building or other public facility
12 that—

13 “(A) involves the procurement of cement
14 or concrete; and

15 “(B) is carried out in whole or in part
16 using Federal funds.

17 “(3) RECOVERED MINERAL COMPONENT.—The
18 term ‘recovered mineral component’ means—

19 “(A) ground granulated blast furnace slag;

20 “(B) coal combustion fly ash; and

21 “(C) any other waste material or byprod-
22 uct recovered or diverted from solid waste that
23 the Administrator, in consultation with an
24 agency head, determines should be treated as
25 recovered mineral component under this section

1 for use in cement or concrete projects paid for,
2 in whole or in part, by the agency head.

3 “(b) IMPLEMENTATION OF REQUIREMENTS.—

4 “(1) IN GENERAL.—Not later than 1 year after
5 the date of enactment of this section, the Adminis-
6 trator and each agency head shall take such actions
7 as are necessary to implement fully all procurement
8 requirements and incentives in effect as of the date
9 of enactment of this section (including guidelines
10 under section 6002) that provide for the use of ce-
11 ment and concrete incorporating recovered mineral
12 component in cement or concrete projects.

13 “(2) PRIORITY.—In carrying out paragraph (1)
14 an agency head shall give priority to achieving great-
15 er use of recovered mineral component in cement or
16 concrete projects for which recovered mineral compo-
17 nents historically have not been used or have been
18 used only minimally.

19 “(3) CONFORMANCE.—The Administrator and
20 each agency head shall carry out this subsection in
21 accordance with section 6002.

22 “(c) FULL IMPLEMENTATION STUDY.—

23 “(1) IN GENERAL.—The Administrator, in co-
24 operation with the Secretary of Transportation and
25 the Secretary of Energy, shall conduct a study to de-

1 terminate the extent to which current procurement re-
2 quirements, when fully implemented in accordance
3 with subsection (b), may realize energy savings and
4 environmental benefits attainable with substitution
5 of recovered mineral component in cement used in
6 cement or concrete projects.

7 “(2) MATTERS TO BE ADDRESSED.—The study
8 shall—

9 “(A) quantify the extent to which recov-
10 ered mineral components are being substituted
11 for Portland cement, particularly as a result of
12 current procurement requirements, and the en-
13 ergy savings and environmental benefits associ-
14 ated with that substitution;

15 “(B) identify all barriers in procurement
16 requirements to fuller realization of energy sav-
17 ings and environmental benefits, including bar-
18 riers resulting from exceptions from current
19 law; and

20 “(C)(i) identify potential mechanisms to
21 achieve greater substitution of recovered min-
22 eral component in types of cement or concrete
23 projects for which recovered mineral compo-
24 nents historically have not been used or have
25 been used only minimally;

1 “(ii) evaluate the feasibility of establishing
2 guidelines or standards for optimized substi-
3 tution rates of recovered mineral component in
4 those cement or concrete projects; and

5 “(iii) identify any potential environmental
6 or economic effects that may result from great-
7 er substitution of recovered mineral component
8 in those cement or concrete projects.

9 “(3) REPORT.—Not later than 30 months after
10 the date of enactment of this section, the Adminis-
11 trator shall submit to Congress a report on the
12 study.

13 “(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—
14 Unless the study conducted under subsection (c) identifies
15 any effects or other problems described in subsection
16 (c)(2)(C)(iii) that warrant further review or delay, the Ad-
17 ministrator and each agency head shall, within 1 year of
18 the release of the report in accordance with subsection
19 (c)(3), take additional actions authorized under this Act
20 to establish procurement requirements and incentives that
21 provide for the use of cement and concrete with increased
22 substitution of recovered mineral component in the con-
23 struction and maintenance of cement or concrete projects,
24 so as to—

1 “(1) realize more fully the energy savings and
2 environmental benefits associated with increased
3 substitution; and

4 “(2) eliminate barriers identified under sub-
5 section (c).

6 “(e) EFFECT OF SECTION.—Nothing in this section
7 affects the requirements of section 6002 (including the
8 guidelines and specifications for implementing those re-
9 quirements).”.

10 (b) TABLE OF CONTENTS AMENDMENT.—The table
11 of contents of the Solid Waste Disposal Act is amended
12 by adding after the item relating to section 6004 the fol-
13 lowing new item:

 “Sec. 6005. Increased use of recovered mineral component in federally funded
 projects involving procurement of cement or concrete.”.

14 **SEC. 11011. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**
15 **BUILDINGS.**

16 (a) IN GENERAL.—Subchapter VI of chapter 31 of
17 title 40, United States Code, is amended by adding at the
18 end the following:

19 **“§3177. Use of photovoltaic energy in public build-**
20 **ings**

21 “(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION
22 PROGRAM.—

23 “(1) IN GENERAL.—The Administrator of Gen-
24 eral Services may establish a photovoltaic energy

1 commercialization program for the procurement and
2 installation of photovoltaic solar electric systems for
3 electric production in new and existing public build-
4 ings.

5 “(2) PURPOSES.—The purposes of the program
6 shall be to accomplish the following:

7 “(A) To accelerate the growth of a com-
8 mercially viable photovoltaic industry to make
9 this energy system available to the general pub-
10 lic as an option which can reduce the national
11 consumption of fossil fuel.

12 “(B) To reduce the fossil fuel consumption
13 and costs of the Federal Government.

14 “(C) To attain the goal of installing solar
15 energy systems in 20,000 Federal buildings by
16 2010, as contained in the Federal Government’s
17 Million Solar Roof Initiative of 1997.

18 “(D) To stimulate the general use within
19 the Federal Government of life-cycle costing
20 and innovative procurement methods.

21 “(E) To develop program performance
22 data to support policy decisions on future incen-
23 tive programs with respect to energy.

24 “(3) ACQUISITION OF PHOTOVOLTAIC SOLAR
25 ELECTRIC SYSTEMS.—

1 “(A) IN GENERAL.—The program shall
2 provide for the acquisition of photovoltaic solar
3 electric systems and associated storage capa-
4 bility for use in public buildings.

5 “(B) ACQUISITION LEVELS.—The acquisi-
6 tion of photovoltaic electric systems shall be at
7 a level substantial enough to allow use of low-
8 cost production techniques with at least 150
9 megawatts (peak) cumulative acquired during
10 the 5 years of the program.

11 “(4) ADMINISTRATION.—The Administrator
12 shall administer the program and shall—

13 “(A) prescribe such rules and regulations
14 as may be appropriate to monitor and assess
15 the performance and operation of photovoltaic
16 solar electric systems installed pursuant to this
17 subsection;

18 “(B) develop innovative procurement strat-
19 egies for the acquisition of such systems; and

20 “(C) transmit to the Committee on Trans-
21 portation and Infrastructure of the House of
22 Representatives and to the Committee on Envi-
23 ronment and Public Works of the Senate an an-
24 nual report on the results of the program.

1 “(b) PHOTOVOLTAIC SYSTEMS EVALUATION PRO-
2 GRAM.—

3 “(1) IN GENERAL.—Not later than 60 days
4 after the date of enactment of this section, the Ad-
5 ministrator, in consultation with the Secretary of
6 Energy, shall establish a photovoltaic solar energy
7 systems evaluation program to evaluate such photo-
8 voltaic solar energy systems as are required in public
9 buildings.

10 “(2) PROGRAM REQUIREMENT.—In evaluating
11 photovoltaic solar energy systems under the pro-
12 gram, the Administrator shall ensure that such sys-
13 tems reflect the most advanced technology.

14 “(c) AUTHORIZATION OF APPROPRIATIONS.—

15 “(1) PHOTOVOLTAIC ENERGY COMMERCIALIZA-
16 TION PROGRAM.—There is authorized to be appro-
17 priated to carry out subsection (a) \$210,000,000 for
18 each of fiscal years 2004 through 2008. Such sums
19 shall remain available until expended.

20 “(2) PHOTOVOLTAIC SYSTEMS EVALUATION
21 PROGRAM.—There is authorized to be appropriated
22 to carry out subsection (b) \$52,700,000 for each of
23 fiscal years 2004 through 2008. Such sums shall re-
24 main available until expended.”.

1 (b) CONFORMING AMENDMENT.—The analysis for
2 such chapter is amended by inserting after the item relat-
3 ing to section 3176 the following:

“3177. Use of photovoltaic energy in public buildings”.

4 **SEC. 11012. TELECOMMUTING STUDY.**

5 (a) STUDY REQUIRED.—The Secretary, in consulta-
6 tion with the Commission, the Director of the Office of
7 Personnel Management, the Administrator of General
8 Services, and the Administrator of NTIA, shall conduct
9 a study of the energy conservation implications of the
10 widespread adoption of telecommuting by Federal employ-
11 ees in the United States.

12 (b) REQUIRED SUBJECTS OF STUDY.—The study re-
13 quired by subsection (a) shall analyze the following sub-
14 jects in relation to the energy saving potential of telecom-
15 muting by Federal employees:

16 (1) Reductions of energy use and energy costs
17 in commuting and regular office heating, cooling,
18 and other operations.

19 (2) Other energy reductions accomplished by
20 telecommuting.

21 (3) Existing regulatory barriers that hamper
22 telecommuting, including barriers to broadband tele-
23 communications services deployment.

24 (4) Collateral benefits to the environment, fam-
25 ily life, and other values.

1 (c) REPORT REQUIRED.—The Secretary shall submit
2 to the President and the Congress a report on the study
3 required by this section not later than 6 months after the
4 date of the enactment of this Act. Such report shall in-
5 clude a description of the results of the analysis of each
6 of the subject described in subsection (b).

7 (d) DEFINITIONS.—As used in this section:

8 (1) SECRETARY.—The term “Secretary” means
9 the Secretary of Energy.

10 (2) COMMISSION.—The term “Commission”
11 means the Federal Communications Commission.

12 (3) NTIA.—The term “NTIA” means the Na-
13 tional Telecommunications and Information Admin-
14 istration of the Department of Commerce.

15 (4) TELECOMMUTING.—The term “telecom-
16 muting” means the performance of work functions
17 using communications technologies, thereby elimi-
18 nating or substantially reducing the need to com-
19 mute to and from traditional worksites.

20 (5) FEDERAL EMPLOYEE.—The term “Federal
21 employee” has the meaning provided the term “em-
22 ployee” by section 2105 of title 5, United States
23 Code.

1 **Subtitle B—Energy Assistance and**
2 **State Programs**

3 **SEC. 11021. LIHEAP AND WEATHERIZATION ASSISTANCE.**

4 (a) LOW-INCOME HOME ENERGY ASSISTANCE PRO-
5 GRAM.—Section 2602(b) of the Low-Income Home Energy
6 Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended
7 by striking “each of fiscal years 2002 through 2004” and
8 inserting “each of fiscal years 2002 and 2003, and
9 \$3,400,000,000 for each of fiscal years 2004 through
10 2006”.

11 (b) WEATHERIZATION.—Section 422 of the Energy
12 Conservation and Production Act (42 U.S.C. 6872) is
13 amended by striking “for fiscal years 1999 through 2003
14 such sums as may be necessary” and inserting
15 “\$325,000,000 for fiscal year 2004, \$400,000,000 for fis-
16 cal year 2005, and \$500,000,000 for fiscal year 2006”.

17 (c) REPORT TO CONGRESS.—Not later than 1 year
18 after the date of enactment of this Act, the Secretary of
19 Health and Human Services shall transmit to the Con-
20 gress a report on how the Low-Income Home Energy As-
21 sistance Program could be used more effectively to prevent
22 loss of life from extreme temperatures. In preparing such
23 report, the Secretary shall consult with appropriate offi-
24 cials in all 50 States and the District of Columbia.

1 **SEC. 11022. STATE ENERGY PROGRAMS.**

2 (a) STATE ENERGY CONSERVATION PLANS.—Section
3 362 of the Energy Policy and Conservation Act (42 U.S.C.
4 6322) is amended by inserting at the end the following
5 new subsection:

6 “(g) The Secretary shall, at least once every 3 years,
7 invite the Governor of each State to review and, if nec-
8 essary, revise the energy conservation plan of such State
9 submitted under subsection (b) or (e). Such reviews should
10 consider the energy conservation plans of other States
11 within the region, and identify opportunities and actions
12 carried out in pursuit of common energy conservation
13 goals.”.

14 (b) STATE ENERGY EFFICIENCY GOALS.—Section
15 364 of the Energy Policy and Conservation Act (42 U.S.C.
16 6324) is amended to read as follows:

17 “STATE ENERGY EFFICIENCY GOALS

18 “SEC. 364. Each State energy conservation plan with
19 respect to which assistance is made available under this
20 part on or after the date of enactment of the Energy Pol-
21 icy Act of 2003 shall contain a goal, consisting of an im-
22 provement of 25 percent or more in the efficiency of use
23 of energy in the State concerned in calendar year 2010
24 as compared to calendar year 1990, and may contain in-
25 terim goals.”.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
 2 365(f) of the Energy Policy and Conservation Act (42
 3 U.S.C. 6325(f)) is amended by striking “for fiscal years
 4 1999 through 2003 such sums as may be necessary” and
 5 inserting “\$100,000,000 for each of the fiscal years 2004
 6 and 2005 and \$125,000,000 for fiscal year 2006”.

7 **SEC. 11023. ENERGY EFFICIENT APPLIANCE REBATE PRO-**
 8 **GRAMS.**

9 (a) DEFINITIONS.—In this section:

10 (1) ELIGIBLE STATE.—The term “eligible
 11 State” means a State that meets the requirements
 12 of subsection (b).

13 (2) ENERGY STAR PROGRAM.—The term “En-
 14 ergy Star program” means the program established
 15 by section 324A of the Energy Policy and Conserva-
 16 tion Act.

17 (3) RESIDENTIAL ENERGY STAR PRODUCT.—
 18 The term “residential Energy Star product” means
 19 a product for a residence that is rated for energy ef-
 20 ficiency under the Energy Star program.

21 (4) STATE ENERGY OFFICE.—The term “State
 22 energy office” means the State agency responsible
 23 for developing State energy conservation plans under
 24 section 362 of the Energy Policy and Conservation
 25 Act (42 U.S.C. 6322).

1 (5) STATE PROGRAM.—The term “State pro-
2 gram” means a State energy efficient appliance re-
3 bate program described in subsection (b)(1).

4 (b) ELIGIBLE STATES.—A State shall be eligible to
5 receive an allocation under subsection (c) if the State—

6 (1) establishes (or has established) a State en-
7 ergy efficient appliance rebate program to provide
8 rebates to residential consumers for the purchase of
9 residential Energy Star products to replace used ap-
10 pliances of the same type;

11 (2) submits an application for the allocation at
12 such time, in such form, and containing such infor-
13 mation as the Secretary may require; and

14 (3) provides assurances satisfactory to the Sec-
15 retary that the State will use the allocation to sup-
16 plement, but not supplant, funds made available to
17 carry out the State program.

18 (c) AMOUNT OF ALLOCATIONS.—

19 (1) IN GENERAL.—Subject to paragraph (2),
20 for each fiscal year, the Secretary shall allocate to
21 the State energy office of each eligible State to carry
22 out subsection (d) an amount equal to the product
23 obtained by multiplying the amount made available
24 under subsection (f) for the fiscal year by the ratio
25 that the population of the State in the most recent

1 calendar year for which data are available bears to
2 the total population of all eligible States in that cal-
3 endar year.

4 (2) MINIMUM ALLOCATIONS.—For each fiscal
5 year, the amounts allocated under this subsection
6 shall be adjusted proportionately so that no eligible
7 State is allocated a sum that is less than an amount
8 determined by the Secretary.

9 (d) USE OF ALLOCATED FUNDS.—The allocation to
10 a State energy office under subsection (c) may be used
11 to pay up to 50 percent of the cost of establishing and
12 carrying out a State program.

13 (e) ISSUANCE OF REBATES.—Rebates may be pro-
14 vided to residential consumers that meet the requirements
15 of the State program. The amount of a rebate shall be
16 determined by the State energy office, taking into consid-
17 eration—

18 (1) the amount of the allocation to the State
19 energy office under subsection (c);

20 (2) the amount of any Federal or State tax in-
21 centive available for the purchase of the residential
22 Energy Star product; and

23 (3) the difference between the cost of the resi-
24 dential Energy Star product and the cost of an ap-
25 pliance that is not a residential Energy Star prod-

1 uct, but is of the same type as, and is the nearest
2 capacity, performance, and other relevant character-
3 istics (as determined by the State energy office) to
4 the residential Energy Star product.

5 (f) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to carry out this section
7 \$50,000,000 for each of the fiscal years 2004 through
8 2008.

9 **SEC. 11024. ENERGY EFFICIENT PUBLIC BUILDINGS.**

10 (a) GRANTS.—The Secretary of Energy may make
11 grants to the State agency responsible for developing State
12 energy conservation plans under section 362 of the Energy
13 Policy and Conservation Act (42 U.S.C. 6322), or, if no
14 such agency exists, a State agency designated by the Gov-
15 ernor of the State, to assist units of local government in
16 the State in improving the energy efficiency of public
17 buildings and facilities—

18 (1) through construction of new energy efficient
19 public buildings that use at least 30 percent less en-
20 ergy than a comparable public building constructed
21 in compliance with standards prescribed in chapter
22 8 of the 2000 International Energy Conservation
23 Code, or a similar State code intended to achieve
24 substantially equivalent efficiency levels; or

1 (2) through renovation of existing public build-
2 ings to achieve reductions in energy use of at least
3 30 percent as compared to the baseline energy use
4 in such buildings prior to renovation, assuming a 3-
5 year, weather-normalized average for calculating
6 such baseline.

7 (b) ADMINISTRATION.—State energy offices receiving
8 grants under this section shall—

9 (1) maintain such records and evidence of com-
10 pliance as the Secretary may require; and

11 (2) develop and distribute information and ma-
12 terials and conduct programs to provide technical
13 services and assistance to encourage planning, fi-
14 nancing, and design of energy efficient public build-
15 ings by units of local government.

16 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
17 purposes of this section, there are authorized to be appro-
18 priated to the Secretary of Energy such sums as may be
19 necessary for each of fiscal years 2004 through 2013. Not
20 more than 30 percent of appropriated funds shall be used
21 for administration.

22 **SEC. 11025. LOW INCOME COMMUNITY ENERGY EFFICIENCY**
23 **PILOT PROGRAM.**

24 (a) GRANTS.—The Secretary of Energy is authorized
25 to make grants to units of local government, private, non-

1 profit community development organizations, and Indian
2 tribe economic development entities to improve energy effi-
3 ciency, identify and develop alternative renewable and dis-
4 tributed energy supplies, and increase energy conservation
5 in low income rural and urban communities.

6 (b) PURPOSE OF GRANTS.—The Secretary may make
7 grants on a competitive basis for—

8 (1) investments that develop alternative renew-
9 able and distributed energy supplies;

10 (2) energy efficiency projects and energy con-
11 servation programs;

12 (3) studies and other activities that improve en-
13 ergy efficiency in low income rural and urban com-
14 munities;

15 (4) planning and development assistance for in-
16 creasing the energy efficiency of buildings and facili-
17 ties; and

18 (5) technical and financial assistance to local
19 government and private entities on developing new
20 renewable and distributed sources of power or com-
21 bined heat and power generation.

22 (c) DEFINITION.—For purposes of this section, the
23 term “Indian tribe” means any Indian tribe, band, nation,
24 or other organized group or community, including any
25 Alaskan Native village or regional or village corporation

1 as defined in or established pursuant to the Alaska Native
 2 Claims Settlement Act (43 U.S.C. 1601 et seq.), which
 3 is recognized as eligible for the special programs and serv-
 4 ices provided by the United States to Indians because of
 5 their status as Indians.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
 7 purposes of this section there are authorized to be appro-
 8 priated to the Secretary of Energy \$20,000,000 for fiscal
 9 year 2004 and each fiscal year thereafter through fiscal
 10 year 2006.

11 **Subtitle C—Energy Efficient** 12 **Products**

13 **SEC. 11041. ENERGY STAR PROGRAM.**

14 (a) AMENDMENT.—The Energy Policy and Conserva-
 15 tion Act (42 U.S.C. 6201 and following) is amended by
 16 inserting the following after section 324:

17 **“SEC. 324A. ENERGY STAR PROGRAM.**

18 “There is established at the Department of Energy
 19 and the Environmental Protection Agency a program to
 20 identify and promote energy-efficient products and build-
 21 ings in order to reduce energy consumption, improve en-
 22 ergy security, and reduce pollution through labeling of and
 23 other forms of communication about products and build-
 24 ings that meet the highest energy efficiency standards. Re-
 25 sponsibilities under the program shall be divided between

1 the Department of Energy and the Environmental Protec-
2 tion Agency consistent with the terms of agreements be-
3 tween the two agencies. The Administrator and the Sec-
4 retary shall—

5 “(1) promote Energy Star compliant tech-
6 nologies as the preferred technologies in the market-
7 place for achieving energy efficiency and to reduce
8 pollution;

9 “(2) work to enhance public awareness of the
10 Energy Star label, including special outreach to
11 small businesses;

12 “(3) preserve the integrity of the Energy Star
13 label; and

14 “(4) solicit the comments of interested parties
15 in establishing a new Energy Star product category
16 or in revising a product category, and upon adoption
17 of a new or revised product category provide an ex-
18 planation of the decision that responds to significant
19 public comments.”.

20 (b) TABLE OF CONTENTS AMENDMENT.—The table
21 of contents of the Energy Policy and Conservation Act is
22 amended by inserting after the item relating to section
23 324 the following new item:

“Sec. 324A. Energy Star program.”.

1 **SEC. 11042. CONSUMER EDUCATION ON ENERGY EFFI-**
2 **CIENCY BENEFITS OF AIR CONDITIONING,**
3 **HEATING, AND VENTILATION MAINTENANCE.**

4 Section 337 of the Energy Policy and Conservation
5 Act (42 U.S.C. 6307) is amended by adding at the end
6 the following:

7 “(c) HVAC MAINTENANCE.—(1) For the purpose of
8 ensuring that installed air conditioning and heating sys-
9 tems operate at their maximum rated efficiency levels, the
10 Secretary shall, within 180 days of the date of enactment
11 of this subsection, carry out a program to educate home-
12 owners and small business owners concerning the energy
13 savings resulting from properly conducted maintenance of
14 air conditioning, heating, and ventilating systems.

15 “(2) The Secretary shall carry out the program in
16 cooperation with the Administrator of the Environmental
17 Protection Agency and such other entities as the Secretary
18 considers appropriate, including industry trade associa-
19 tions, industry members, and energy efficiency organiza-
20 tions.

21 “(d) SMALL BUSINESS EDUCATION AND ASSIST-
22 ANCE.—The Administrator of the Small Business Admin-
23 istration, in consultation with the Secretary of Energy and
24 the Administrator of the Environmental Protection Agen-
25 cy, shall develop and coordinate a Government-wide pro-
26 gram, building on the existing Energy Star for Small

1 Business Program, to assist small business to become
2 more energy efficient, understand the cost savings obtain-
3 able through efficiencies, and identify financing options
4 for energy efficiency upgrades. The Secretary and the Ad-
5 ministrator shall make the program information available
6 directly to small businesses and through other Federal
7 agencies, including the Federal Emergency Management
8 Agency, and the Department of Agriculture.”.

9 **SEC. 11043. ADDITIONAL DEFINITIONS.**

10 Section 321 of the Energy Policy and Conservation
11 Act (42 U.S.C. 6291) is amended by adding at the end
12 the following:

13 “(32) The term ‘battery charger’ means a de-
14 vice that charges batteries for consumer products.

15 “(33) The term ‘commercial refrigerator, freez-
16 er and refrigerator-freezer’ means a refrigerator,
17 freezer or refrigerator-freezer that—

18 “(A) is not a consumer product regulated
19 under this Act; and

20 “(B) incorporates most components in-
21 volved in the vapor-compression cycle and the
22 refrigerated compartment in a single package.

23 “(34) The term ‘external power supply’ means
24 an external power supply circuit that is used to con-
25 vert household electric current into either DC cur-

1 rent or lower-voltage AC current to operate a con-
2 sumer product.

3 “(35) The term ‘illuminated exit sign’ means a
4 sign that—

5 “(A) is designed to be permanently fixed in
6 place to identify an exit; and

7 “(B) consists of—

8 “(i) an electrically powered integral
9 light source that illuminates the legend
10 ‘EXIT’ and any directional indicators; and

11 “(ii) provides contrast between the
12 legend, any directional indicators, and the
13 background.

14 “(36)(A) Except as provided in subparagraph
15 (B), the term ‘low-voltage dry-type transformer’
16 means a transformer that—

17 “(i) has an input voltage of 600 volts or
18 less;

19 “(ii) is air-cooled;

20 “(iii) does not use oil as a coolant; and

21 “(iv) is rated for operation at a frequency
22 of 60 Hertz.

23 “(B) The term ‘low-voltage dry-type trans-
24 former’ does not include—

1 “(i) transformers with multiple voltage
2 taps, with the highest voltage tap equaling at
3 least 20 percent more than the lowest voltage
4 tap;

5 “(ii) transformers that are designed to be
6 used in a special purpose application, such as
7 transformers commonly known as drive trans-
8 formers, rectifier transformers,
9 autotransformers, Uninterruptible Power Sys-
10 tem transformers, impedance transformers, har-
11 monic transformers, regulating transformers,
12 sealed and nonventilating transformers, ma-
13 chine tool transformers, welding transformers,
14 grounding transformers, or testing trans-
15 formers; or

16 “(iii) any transformer not listed in clause
17 (ii) that is excluded by the Secretary by rule be-
18 cause the transformer is designed for a special
19 application and the application of standards to
20 the transformer would not result in significant
21 energy savings.

22 “(37) The term ‘standby mode’ means the low-
23 est amount of electric power used by a household ap-
24 pliance when not performing its active functions, as

1 defined on an individual product basis by the Sec-
2 retary.

3 “(38) The term ‘torchiere’ means a portable
4 electric lamp with a reflector bowl that directs light
5 upward so as to give indirect illumination.

6 “(39) The term ‘transformer’ means a device
7 consisting of two or more coils of insulated wire that
8 transfers alternating current by electromagnetic in-
9 duction from one coil to another to change the origi-
10 nal voltage or current value.

11 “(40) The term ‘unit heater’ means a self-con-
12 tained fan-type heater designed to be installed with-
13 in the heated space, except that such term does not
14 include a warm air furnace.

15 “(41) The term ‘traffic signal module’ means a
16 standard 8-inch (200mm) or 12-inch (300mm) traf-
17 fic signal indication, consisting of a light source, a
18 lens, and all other parts necessary for operation,
19 that communicates movement messages to drivers
20 through red, amber, and green colors.”.

21 **SEC. 11044. ADDITIONAL TEST PROCEDURES.**

22 (a) EXIT SIGNS.—Section 323(b) of the Energy Pol-
23 icy and Conservation Act (42 U.S.C. 6293) is amended
24 by adding at the end the following:

1 “(9) Test procedures for illuminated exit signs
2 shall be based on the test method used under
3 Version 2.0 of the Energy Star program of the Envi-
4 ronmental Protection Agency for illuminated exit
5 signs.

6 “(10) Test procedures for low voltage dry-type
7 distribution transformers shall be based on the
8 ‘Standard Test Method for Measuring the Energy
9 Consumption of Distribution Transformers’ pre-
10 scribed by the National Electrical Manufacturers As-
11 sociation (NEMA TP 2–1998). The Secretary may
12 review and revise this test procedure based on future
13 revisions to such standard test method.

14 “(11) Test procedures for traffic signal modules
15 shall be based on the test method used under the
16 Energy Star program of the Environmental Protec-
17 tion Agency for traffic signal modules, as in effect
18 on the date of enactment of this paragraph.”.

19 (b) ADDITIONAL CONSUMER AND COMMERCIAL
20 PRODUCTS.—Section 323 of the Energy Policy and Con-
21 servation Act (42 U.S.C. 6293) is further amended by
22 adding at the end the following:

23 “(f) ADDITIONAL CONSUMER AND COMMERCIAL
24 PRODUCTS.—The Secretary shall within 24 months after
25 the date of enactment of this subsection prescribe testing

1 requirements for suspended ceiling fans, refrigerated bot-
 2 tled or canned beverage vending machines, commercial
 3 unit heaters, and commercial refrigerators, freezers and
 4 refrigerator-freezers. Such testing requirements shall be
 5 based on existing test procedures used in industry to the
 6 extent practical and reasonable. In the case of suspended
 7 ceiling fans, such test procedures shall include efficiency
 8 at both maximum output and at an output no more than
 9 50 percent of the maximum output.”.

10 **SEC. 11045. ENERGY CONSERVATION STANDARDS FOR AD-**
 11 **DITIONAL CONSUMER AND COMMERCIAL**
 12 **PRODUCTS.**

13 Section 325 of the Energy Policy and Conservation
 14 Act (42 U.S.C. 6295) is amended by adding at the end
 15 the following:

16 “(u) STANDBY MODE ELECTRIC ENERGY CONSUMP-
 17 TION.—

18 “(1) INITIAL RULEMAKING.—(A) The Secretary
 19 shall, within 18 months after the date of enactment
 20 of this subsection, prescribe by notice and comment,
 21 definitions of standby mode and test procedures for
 22 the standby mode power use of battery chargers and
 23 external power supplies. In establishing these test
 24 procedures, the Secretary shall consider, among
 25 other factors, existing test procedures used for meas-

1 uring energy consumption in standby mode and as-
2 sess the current and projected future market for
3 battery chargers and external power supplies. This
4 assessment shall include estimates of the significance
5 of potential energy savings from technical improve-
6 ments to these products and suggested product
7 classes for standards. Prior to the end of this time
8 period, the Secretary shall hold a scoping workshop
9 to discuss and receive comments on plans for devel-
10 oping energy conservation standards for standby
11 mode energy use for these products.

12 “(B) The Secretary shall, within 3 years after
13 the date of enactment of this subsection, issue a
14 final rule that determines whether energy conserva-
15 tion standards shall be promulgated for battery
16 chargers and external power supplies or classes
17 thereof. For each product class, any such standards
18 shall be set at the lowest level of standby energy use
19 that—

20 “(i) meets the criteria of subsections (o),
21 (p), (q), (r), (s) and (t); and

22 “(ii) will result in significant overall an-
23 nual energy savings, considering both standby
24 mode and other operating modes.

1 “(2) DESIGNATION OF ADDITIONAL COVERED
2 PRODUCTS.—(A) Not later than 180 days after the
3 date of enactment of this subsection, the Secretary
4 shall publish for public comment and public hearing
5 a notice to determine whether any noncovered prod-
6 ucts should be designated as covered products for
7 the purpose of instituting a rulemaking under this
8 section to determine whether an energy conservation
9 standard restricting standby mode energy consump-
10 tion, should be promulgated; except that any restric-
11 tion on standby mode energy consumption shall be
12 limited to major sources of such consumption.

13 “(B) In making the determinations pursuant to
14 subparagraph (A) of whether to designate new cov-
15 ered products and institute rulemakings, the Sec-
16 retary shall, among other relevant factors and in ad-
17 dition to the criteria in section 322(b), consider—

18 “(i) standby mode power consumption
19 compared to overall product energy consump-
20 tion; and

21 “(ii) the priority and energy savings poten-
22 tial of standards which may be promulgated
23 under this subsection compared to other re-
24 quired rulemakings under this section and the

1 available resources of the Department to con-
2 duct such rulemakings.

3 “(C) Not later than 1 year after the date of en-
4 actment of this subsection, the Secretary shall issue
5 a determination of any new covered products for
6 which he intends to institute rulemakings on standby
7 mode pursuant to this section and he shall state the
8 dates by which he intends to initiate those
9 rulemakings.

10 “(3) REVIEW OF STANDBY ENERGY USE IN
11 COVERED PRODUCTS.—In determining pursuant to
12 section 323 whether test procedures and energy con-
13 servation standards pursuant to this section should
14 be revised, the Secretary shall consider for covered
15 products which are major sources of standby mode
16 energy consumption whether to incorporate standby
17 mode into such test procedures and energy conserva-
18 tion standards, taking into account, among other
19 relevant factors, the criteria for non-covered prod-
20 ucts in subparagraph (B) of paragraph (2) of this
21 subsection.

22 “(4) RULEMAKING FOR STANDBY MODE.—(A)
23 Any rulemaking instituted under this subsection or
24 for covered products under this section which re-
25 stricts standby mode power consumption shall be

1 subject to the criteria and procedures for issuing en-
2 ergy conservation standards set forth in this section
3 and the criteria set forth in subparagraph (B) of
4 paragraph (2) of this subsection.

5 “(B) No standard can be proposed for new cov-
6 ered products or covered products in a standby mode
7 unless the Secretary has promulgated applicable test
8 procedures for each product pursuant to section 323.

9 “(C) The provisions of section 327 shall apply
10 to new covered products which are subject to the
11 rulemakings for standby mode after a final rule has
12 been issued.

13 “(5) EFFECTIVE DATE.—Any standard promul-
14 gated under this subsection shall be applicable to
15 products manufactured or imported 3 years after the
16 date of promulgation.

17 “(6) VOLUNTARY PROGRAMS TO REDUCE
18 STANDBY MODE ENERGY USE.—The Secretary and
19 the Administrator shall collaborate and develop pro-
20 grams, including programs pursuant to section 324A
21 (relating to Energy Star Programs) and other vol-
22 untary industry agreements or codes of conduct,
23 which are designed to reduce standby mode energy
24 use.

1 “(v) SUSPENDED CEILING FANS, VENDING MA-
2 CHINES, UNIT HEATERS, AND COMMERCIAL REFRIG-
3 ERATORS, FREEZERS AND REFRIGERATOR-FREEZERS.—
4 The Secretary shall within 24 months after the date on
5 which testing requirements are prescribed by the Sec-
6 retary pursuant to section 323(f), prescribe, by rule, en-
7 ergy conservation standards for suspended ceiling fans, re-
8 frigerated bottled or canned beverage vending machines,
9 unit heaters, and commercial refrigerators, freezers and
10 refrigerator-freezers. In establishing standards under this
11 subsection, the Secretary shall use the criteria and proce-
12 dures contained in subsections (l) and (m). Any standard
13 prescribed under this subsection shall apply to products
14 manufactured 3 years after the date of publication of a
15 final rule establishing such standard.

16 “(w) ILLUMINATED EXIT SIGNS.—Illuminated exit
17 signs manufactured on or after January 1, 2005 shall
18 meet the Version 2.0 Energy Star Program performance
19 requirements for illuminated exit signs prescribed by the
20 Environmental Protection Agency

21 “(x) TORCHIERES.—Torchieres manufactured on or
22 after January 1, 2005—

23 “(1) shall consume not more than 190 watts of
24 power; and

1 “(2) shall not be capable of operating with
2 lamps that total more than 190 watts.

3 “(y) LOW VOLTAGE DRY-TYPE TRANSFORMERS.—
4 The efficiency of low voltage dry-type transformers manu-
5 factured on or after January 1, 2005 shall be the Class
6 I Efficiency Levels for low voltage dry-type transformers
7 specified in Table 4–2 of the ‘Guide for Determining En-
8 ergy Efficiency for Distribution Transformers’ published
9 by the National Electrical Manufacturers Association
10 (NEMA TP–1–1996).

11 “(z) TRAFFIC SIGNAL MODULES.—Traffic signal
12 modules manufactured on or after January 1, 2006 shall
13 meet the performance requirements used under the En-
14 ergy Star program of the Environmental Protection Agen-
15 cy for traffic signals, as in effect on the date of enactment
16 of this paragraph, and shall be installed with compatible,
17 electrically-connected signal control interface devices and
18 conflict monitoring systems.

19 “(aa) EFFECTIVE DATE OF SECTION 327.—The pro-
20 visions of section 327 shall apply to products for which
21 standards are set in subsections (v) through (z) of this
22 section after the effective date for such standards.”.

23 **SEC. 11046. ENERGY LABELING.**

24 (a) RULEMAKING ON EFFECTIVENESS OF CONSUMER
25 PRODUCT LABELING.—Paragraph (2) of section 324(a) of

1 the Energy Policy and Conservation Act (42 U.S.C.
2 6294(a)(2)) is amended by adding at the end the fol-
3 lowing:

4 “(F) Not later than 3 months after the date of enact-
5 ment of this subparagraph, the Commission shall initiate
6 a rulemaking to consider the effectiveness of the current
7 consumer products labeling program in assisting con-
8 sumers in making purchasing decisions and improving en-
9 ergy efficiency and to consider changes to the labeling
10 rules that would improve the effectiveness of consumer
11 product labels. Such rulemaking shall be completed within
12 2 years after the date of enactment of this subpara-
13 graph.”.

14 (b) RULEMAKING ON LABELING FOR ADDITIONAL
15 PRODUCTS.—Section 324(a) of the Energy Policy and
16 Conservation Act (42 U.S.C. 6294(a)) is further amended
17 by adding at the end the following:

18 “(5) The Secretary or the Commission, as appro-
19 priate, may for covered products referred to in subsections
20 (u) through (z) of section 325, prescribe, by rule, pursuant
21 to this section, labeling requirements for such products
22 after a test procedure has been set pursuant to section
23 323.”.

1 **SEC. 11047. STUDY OF ENERGY EFFICIENCY STANDARDS.**

2 The Secretary of Energy shall contract with the Na-
3 tional Academy of Sciences for a study, to be completed
4 within 1 year of enactment of this Act, to examine whether
5 the goals of energy efficiency standards are best served
6 by measurement of energy consumed, and efficiency im-
7 provements, at the actual site of energy consumption, or
8 through the full fuel cycle, beginning at the source of en-
9 ergy production. The Secretary shall submit the report to
10 the Congress.

11 **TITLE II—OIL AND GAS**
12 **Subtitle A—Alaska Natural Gas**
13 **Pipeline**

14 **SEC. 12001. SHORT TITLE.**

15 This subtitle may be cited as the “Alaska Natural
16 Gas Pipeline Act of 2003”.

17 **SEC. 12002. FINDINGS AND PURPOSES.**

18 (a) FINDINGS.—Congress finds the following:

19 (1) Construction of a natural gas pipeline sys-
20 tem from the Alaskan North Slope to United States
21 markets is in the national interest and will enhance
22 national energy security by providing access to the
23 significant gas reserves in Alaska needed to meet the
24 anticipated demand for natural gas.

25 (2) The Commission issued a conditional certifi-
26 cate of public convenience and necessity for the

1 Alaska natural gas transportation system, which re-
2 mains in effect.

3 (b) PURPOSES.—The purposes of this subtitle are as
4 follows:

5 (1) To provide a statutory framework for the
6 expedited approval, construction, and initial oper-
7 ation of an Alaska natural gas transportation
8 project, as an alternative to the framework provided
9 in the Alaska Natural Gas Transportation Act of
10 1976 (15 U.S.C. 719 et seq.), which remains in ef-
11 fect.

12 (2) To establish a process for providing access
13 to such transportation project in order to promote
14 competition in the exploration, development, and
15 production of Alaska natural gas.

16 (3) To clarify Federal authorities under the
17 Alaska Natural Gas Transportation Act of 1976.

18 **SEC. 12003. DEFINITIONS.**

19 In this subtitle, the following definitions apply:

20 (1) ALASKA NATURAL GAS.—The term “Alaska
21 natural gas” means natural gas derived from the
22 area of the State of Alaska lying north of 64 degrees
23 North latitude.

24 (2) ALASKA NATURAL GAS TRANSPORTATION
25 PROJECT.—The term “Alaska natural gas transpor-

1 tation project” means any natural gas pipeline sys-
2 tem that carries Alaska natural gas to the border
3 between Alaska and Canada (including related facili-
4 ties subject to the jurisdiction of the Commission)
5 that is authorized under either—

6 (A) the Alaska Natural Gas Transpor-
7 tation Act of 1976 (15 U.S.C. 719 et seq.); or

8 (B) section 12004.

9 (3) ALASKA NATURAL GAS TRANSPORTATION
10 SYSTEM.—The term “Alaska natural gas transpor-
11 tation system” means the Alaska natural gas trans-
12 portation project authorized under the Alaska Nat-
13 ural Gas Transportation Act of 1976 and designated
14 and described in section 2 of the President’s deci-
15 sion.

16 (4) COMMISSION.—The term “Commission”
17 means the Federal Energy Regulatory Commission.

18 (5) PRESIDENT’S DECISION.—The term “Presi-
19 dent’s decision” means the decision and report to
20 Congress on the Alaska natural gas transportation
21 system issued by the President on September 22,
22 1977, pursuant to section 7 of the Alaska Natural
23 Gas Transportation Act of 1976 (15 U.S.C. 719e)
24 and approved by Public Law 95–158 (91 Stat.
25 1268).

1 **SEC. 12004. ISSUANCE OF CERTIFICATE OF PUBLIC CON-**
2 **VENIENCE AND NECESSITY.**

3 (a) AUTHORITY OF THE COMMISSION.—Notwith-
4 standing the provisions of the Alaska Natural Gas Trans-
5 portation Act of 1976 (15 U.S.C. 719 et seq.), the Com-
6 mission may, pursuant to section 7(c) of the Natural Gas
7 Act (15 U.S.C. 717f(c)), consider and act on an applica-
8 tion for the issuance of a certificate of public convenience
9 and necessity authorizing the construction and operation
10 of an Alaska natural gas transportation project other than
11 the Alaska natural gas transportation system.

12 (b) ISSUANCE OF CERTIFICATE.—

13 (1) IN GENERAL.—The Commission shall issue
14 a certificate of public convenience and necessity au-
15 thorizing the construction and operation of an Alas-
16 ka natural gas transportation project under this sec-
17 tion if the applicant has satisfied the requirements
18 of section 7(e) of the Natural Gas Act (15 U.S.C.
19 717f(e)).

20 (2) CONSIDERATIONS.—In considering an appli-
21 cation under this section, the Commission shall pre-
22 sume that—

23 (A) a public need exists to construct and
24 operate the proposed Alaska natural gas trans-
25 portation project; and

1 (B) sufficient downstream capacity will
2 exist to transport the Alaska natural gas mov-
3 ing through such project to markets in the con-
4 tiguous United States.

5 (c) EXPEDITED APPROVAL PROCESS.—The Commis-
6 sion shall issue a final order granting or denying any ap-
7 plication for a certificate of public convenience and neces-
8 sity under section 7(c) of the Natural Gas Act (15 U.S.C.
9 717f(c)) and this section not more than 60 days after the
10 issuance of the final environmental impact statement for
11 that project pursuant to section 12005.

12 (d) PROHIBITION ON CERTAIN PIPELINE ROUTE.—
13 No license, permit, lease, right-of-way, authorization, or
14 other approval required under Federal law for the con-
15 struction of any pipeline to transport natural gas from
16 lands within the Prudhoe Bay oil and gas lease area may
17 be granted for any pipeline that follows a route that tra-
18 verses—

19 (1) the submerged lands (as defined by the
20 Submerged Lands Act) beneath, or the adjacent
21 shoreline of, the Beaufort Sea; and

22 (2) enters Canada at any point north of 68 de-
23 grees North latitude.

24 (e) OPEN SEASON.—Except where an expansion is
25 ordered pursuant to section 12006, initial or expansion ca-

1 capacity on any Alaska natural gas transportation project
2 shall be allocated in accordance with procedures to be es-
3 tablished by the Commission in regulations governing the
4 conduct of open seasons for such project. Such procedures
5 shall include the criteria for and timing of any open sea-
6 sons, be consistent with the purposes set forth in section
7 12002(b)(2), and, for any open season for capacity beyond
8 the initial capacity, provide the opportunity for the trans-
9 portation of natural gas other than from the Prudhoe Bay
10 and Point Thompson units. The Commission shall issue
11 such regulations not later than 120 days after the date
12 of enactment of this Act.

13 (f) PROJECTS IN THE CONTIGUOUS UNITED
14 STATES.—Applications for additional or expanded pipeline
15 facilities that may be required to transport Alaska natural
16 gas from Canada to markets in the contiguous United
17 States may be made pursuant to the Natural Gas Act.
18 To the extent such pipeline facilities include the expansion
19 of any facility constructed pursuant to the Alaska Natural
20 Gas Transportation Act of 1976, the provisions of that
21 Act shall continue to apply.

22 (g) STUDY OF IN-STATE NEEDS.—The holder of the
23 certificate of public convenience and necessity issued,
24 modified, or amended by the Commission for an Alaska
25 natural gas transportation project shall demonstrate that

1 it has conducted a study of Alaska in-State needs, includ-
2 ing tie-in points along the Alaska natural gas transpor-
3 tation project for in-State access.

4 (h) ALASKA ROYALTY GAS.—The Commission, upon
5 the request of the State of Alaska and after a hearing,
6 may provide for reasonable access to the Alaska natural
7 gas transportation project for the State of Alaska or its
8 designee for the transportation of the State’s royalty gas
9 for local consumption needs within the State; except that
10 the rates of existing shippers of subscribed capacity on
11 such project shall not be increased as a result of such ac-
12 cess.

13 (i) REGULATIONS.—The Commission may issue regu-
14 lations to carry out the provisions of this section.

15 **SEC. 12005. ENVIRONMENTAL REVIEWS.**

16 (a) COMPLIANCE WITH NEPA.—The issuance of a
17 certificate of public convenience and necessity authorizing
18 the construction and operation of any Alaska natural gas
19 transportation project under section 12004 shall be treat-
20 ed as a major Federal action significantly affecting the
21 quality of the human environment within the meaning of
22 section 102(2)(C) of the National Environmental Policy
23 Act of 1969 (42 U.S.C. 4332(2)(C)).

24 (b) DESIGNATION OF LEAD AGENCY.—The Commis-
25 sion shall be the lead agency for purposes of complying

1 with the National Environmental Policy Act of 1969, and
2 shall be responsible for preparing the statement required
3 by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c))
4 with respect to an Alaska natural gas transportation
5 project under section 12004. The Commission shall pre-
6 pare a single environmental statement under this section,
7 which shall consolidate the environmental reviews of all
8 Federal agencies considering any aspect of the project.

9 (c) OTHER AGENCIES.—All Federal agencies consid-
10 ering aspects of the construction and operation of an Alas-
11 ka natural gas transportation project under section 12004
12 shall cooperate with the Commission, and shall comply
13 with deadlines established by the Commission in the prep-
14 aration of the statement under this section. The statement
15 prepared under this section shall be used by all such agen-
16 cies to satisfy their responsibilities under section
17 102(2)(C) of the National Environmental Policy Act of
18 1969 (42 U.S.C. 4332(2)(C)) with respect to such project.

19 (d) EXPEDITED PROCESS.—The Commission shall
20 issue a draft statement under this section not later than
21 12 months after the Commission determines the applica-
22 tion to be complete and shall issue the final statement not
23 later than 6 months after the Commission issues the draft
24 statement, unless the Commission for good cause finds
25 that additional time is needed.

1 **SEC. 12006. PIPELINE EXPANSION.**

2 (a) **AUTHORITY.**—With respect to any Alaska natural
3 gas transportation project, upon the request of one or
4 more persons and after giving notice and an opportunity
5 for a hearing, the Commission may order the expansion
6 of such project if it determines that such expansion is re-
7 quired by the present and future public convenience and
8 necessity.

9 (b) **REQUIREMENTS.**—Before ordering an expansion,
10 the Commission shall—

11 (1) approve or establish rates for the expansion
12 service that are designed to ensure the recovery, on
13 an incremental or rolled-in basis, of the cost associ-
14 ated with the expansion (including a reasonable rate
15 of return on investment);

16 (2) ensure that the rates as established do not
17 require existing shippers on the Alaska natural gas
18 transportation project to subsidize expansion ship-
19 pers;

20 (3) find that the proposed shipper will comply
21 with, and the proposed expansion and the expansion
22 of service will be undertaken and implemented based
23 on, terms and conditions consistent with the then-ef-
24 fective tariff of the Alaska natural gas transpor-
25 tation project;

1 (4) find that the proposed facilities will not ad-
2 versely affect the financial or economic viability of
3 the Alaska natural gas transportation project;

4 (5) find that the proposed facilities will not ad-
5 versely affect the overall operations of the Alaska
6 natural gas transportation project;

7 (6) find that the proposed facilities will not di-
8 minish the contract rights of existing shippers to
9 previously subscribed certificated capacity;

10 (7) ensure that all necessary environmental re-
11 views have been completed; and

12 (8) find that adequate downstream facilities
13 exist or are expected to exist to deliver incremental
14 Alaska natural gas to market.

15 (c) REQUIREMENT FOR A FIRM TRANSPORTATION
16 AGREEMENT.—Any order of the Commission issued pur-
17 suant to this section shall be null and void unless the per-
18 son or persons requesting the order executes a firm trans-
19 portation agreement with the Alaska natural gas transpor-
20 tation project within a reasonable period of time as speci-
21 fied in such order.

22 (d) LIMITATION.—Nothing in this section shall be
23 construed to expand or otherwise affect any authorities of
24 the Commission with respect to any natural gas pipeline
25 located outside the State of Alaska.

1 (e) REGULATIONS.—The Commission may issue reg-
2 ulations to carry out the provisions of this section.

3 **SEC. 12007. FEDERAL COORDINATOR.**

4 (a) ESTABLISHMENT.—There is established, as an
5 independent office in the executive branch, the Office of
6 the Federal Coordinator for Alaska Natural Gas Trans-
7 portation Projects.

8 (b) FEDERAL COORDINATOR.—The Office shall be
9 headed by a Federal Coordinator for Alaska Natural Gas
10 Transportation Projects, who shall—

11 (1) be appointed by the President, by and with
12 the advice of the Senate;

13 (2) hold office at the pleasure of the President;
14 and

15 (3) be compensated at the rate prescribed for
16 level III of the Executive Schedule (5 U.S.C. 5314).

17 (c) DUTIES.—The Federal Coordinator shall be re-
18 sponsible for—

19 (1) coordinating the expeditious discharge of all
20 activities by Federal agencies with respect to an
21 Alaska natural gas transportation project; and

22 (2) ensuring the compliance of Federal agencies
23 with the provisions of this subtitle.

24 (d) REVIEWS AND ACTIONS OF OTHER FEDERAL
25 AGENCIES.—

1 (1) EXPEDITED REVIEWS AND ACTIONS.—All
2 reviews conducted and actions taken by any Federal
3 officer or agency relating to an Alaska natural gas
4 transportation project authorized under this section
5 shall be expedited, in a manner consistent with com-
6 pletion of the necessary reviews and approvals by the
7 deadlines set forth in this subtitle.

8 (2) PROHIBITION ON CERTAIN TERMS AND CON-
9 DITIONS.—Except with respect to Commission ac-
10 tions under sections 12004, 12005, and 12006, no
11 Federal officer or agency shall have the authority to
12 include terms and conditions that are permitted, but
13 not required, by law on any certificate, right-of-way,
14 permit, lease, or other authorization issued to an
15 Alaska natural gas transportation project if the Fed-
16 eral Coordinator determines that the terms and con-
17 ditions would prevent or impair in any significant re-
18 spect the expeditious construction and operation of
19 the project.

20 (3) PROHIBITION ON CERTAIN ACTIONS.—Ex-
21 cept with respect to Commission actions under sec-
22 tions 12004, 12005, and 12006, unless required by
23 law, no Federal officer or agency shall add to,
24 amend, or abrogate any certificate, right-of-way, per-
25 mit, lease, or other authorization issued to an Alas-

1 ka natural gas transportation project if the Federal
2 Coordinator determines that such action would pre-
3 vent or impair in any significant respect the expedi-
4 tious construction and operation of the project.

5 (e) STATE COORDINATION.—The Federal Coordi-
6 nator shall enter into a Joint Surveillance and Monitoring
7 Agreement, approved by the President and the Governor
8 of Alaska, with the State of Alaska similar to that in effect
9 during construction of the Trans-Alaska Oil Pipeline to
10 monitor the construction of the Alaska natural gas trans-
11 portation project. The Federal Government shall have pri-
12 mary surveillance and monitoring responsibility where the
13 Alaska natural gas transportation project crosses Federal
14 lands and private lands, and the State government shall
15 have primary surveillance and monitoring responsibility
16 where the Alaska natural gas transportation project
17 crosses State lands.

18 (f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS
19 AND AUTHORITY.—Upon appointment of the Federal Co-
20 ordinator by the President, all of the functions and au-
21 thority of the Office of Federal Inspector of Construction
22 for the Alaska Natural Gas Transportation System vested
23 in the Secretary of Energy pursuant to section 3012(b)
24 of Public Law 102–486 (15 U.S.C. 719e(b)), including all
25 functions and authority described and enumerated in the

1 Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33,663),
2 Executive Order No. 12142 of June 21, 1979 (44 Fed.
3 Reg. 36,927), and section 5 of the President's decision,
4 shall be transferred to the Federal Coordinator.

5 **SEC. 12008. JUDICIAL REVIEW.**

6 (a) **EXCLUSIVE JURISDICTION.**—Except for review by
7 the Supreme Court of the United States on writ of certio-
8 rari, the United States Court of Appeals for the District
9 of Columbia Circuit shall have original and exclusive juris-
10 diction to determine—

11 (1) the validity of any final order or action (in-
12 cluding a failure to act) of any Federal agency or of-
13 ficer under this subtitle;

14 (2) the constitutionality of any provision of this
15 subtitle, or any decision made or action taken under
16 this subtitle; or

17 (3) the adequacy of any environmental impact
18 statement prepared under the National Environ-
19 mental Policy Act of 1969 with respect to any action
20 under this subtitle.

21 (b) **DEADLINE FOR FILING CLAIM.**—Claims arising
22 under this subtitle may be brought not later than 60 days
23 after the date of the decision or action giving rise to the
24 claim.

“(2) The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2.”.

14 **SEC. 12009. STATE JURISDICTION OVER IN-STATE DELIV-**
15 **ERY OF NATURAL GAS.**

(a) LOCAL DISTRIBUTION.—Any facility receiving natural gas from the Alaska natural gas transportation project for delivery to consumers within the State of Alaska shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)), and therefore not subject to the jurisdiction of the Commission.

(b) ADDITIONAL PIPELINES.—Nothing in this sub-
title, except as provided in section 12004(d), shall preclude
or affect a future gas pipeline that may be constructed

1 to deliver natural gas to Fairbanks, Anchorage,
2 Matanuska-Susitna Valley, or the Kenai peninsula or
3 Valdez or any other site in the State of Alaska for con-
4 sumption within or distribution outside the State of Alas-
5 ka.

6 (c) RATE COORDINATION.—Pursuant to the Natural
7 Gas Act, the Commission shall establish rates for the
8 transportation of natural gas on the Alaska natural gas
9 transportation project. In exercising such authority, the
10 Commission, pursuant to section 17(b) of the Natural Gas
11 Act (15 U.S.C. 717p(b)), shall confer with the State of
12 Alaska regarding rates (including rate settlements) appli-
13 cable to natural gas transported on and delivered from the
14 Alaska natural gas transportation project for use within
15 the State of Alaska.

16 **SEC. 12010. STUDY OF ALTERNATIVE MEANS OF CONSTRUC-**
17 **TION.**

18 (a) REQUIREMENT OF STUDY.—If no application for
19 the issuance of a certificate or amended certificate of pub-
20 lic convenience and necessity authorizing the construction
21 and operation of an Alaska natural gas transportation
22 project has been filed with the Commission not later than
23 18 months after the date of enactment of this Act, the
24 Secretary of Energy shall conduct a study of alternative

1 approaches to the construction and operation of the
2 project.

3 (b) SCOPE OF STUDY.—The study shall consider the
4 feasibility of establishing a Government corporation to
5 construct an Alaska natural gas transportation project,
6 and alternative means of providing Federal financing and
7 ownership (including alternative combinations of Govern-
8 ment and private corporate ownership) of the project.

9 (c) CONSULTATION.—In conducting the study, the
10 Secretary of Energy shall consult with the Secretary of
11 the Treasury and the Secretary of the Army (acting
12 through the Commanding General of the Corps of Engi-
13 neers).

14 (d) REPORT.—If the Secretary of Energy is required
15 to conduct a study under subsection (a), the Secretary
16 shall submit a report containing the results of the study,
17 the Secretary's recommendations, and any proposals for
18 legislation to implement the Secretary's recommendations
19 to Congress.

20 **SEC. 12011. CLARIFICATION OF ANGTA STATUS AND AU-**
21 **THORITIES.**

22 (a) SAVINGS CLAUSE.—Nothing in this subtitle af-
23 fects any decision, certificate, permit, right-of-way, lease,
24 or other authorization issued under section 9 of the Alaska
25 Natural Gas Transportation Act of 1976 (15 U.S.C.

1 719g) or any Presidential findings or waivers issued in
2 accordance with that Act.

3 (b) CLARIFICATION OF AUTHORITY TO AMEND
4 TERMS AND CONDITIONS TO MEET CURRENT PROJECT
5 REQUIREMENTS.—Any Federal officer or agency respon-
6 sible for granting or issuing any certificate, permit, right-
7 of-way, lease, or other authorization under section 9 of
8 the Alaska Natural Gas Transportation Act of 1976 (15
9 U.S.C. 719g) may add to, amend, or abrogate any term
10 or condition included in such certificate, permit, right-of-
11 way, lease, or other authorization to meet current project
12 requirements (including the physical design, facilities, and
13 tariff specifications), so long as such action does not com-
14 pel a change in the basic nature and general route of the
15 Alaska natural gas transportation system as designated
16 and described in section 2 of the President’s decision, or
17 would otherwise prevent or impair in any significant re-
18 spect the expeditious construction and initial operation of
19 such transportation system.

20 (c) UPDATED ENVIRONMENTAL REVIEWS.—The Sec-
21 retary of Energy shall require the sponsor of the Alaska
22 natural gas transportation system to submit such updated
23 environmental data, reports, permits, and impact analyses
24 as the Secretary determines are necessary to develop de-

1 tailed terms, conditions, and compliance plans required by
2 section 5 of the President’s decision.

3 **SEC. 12012. SENSE OF CONGRESS.**

4 It is the sense of Congress that an Alaska natural
5 gas transportation project will provide significant eco-
6 nomic benefits to the United States and Canada. In order
7 to maximize those benefits, Congress urges the sponsors
8 of the pipeline project to make every effort to use steel
9 that is manufactured or produced in North America and
10 to negotiate a project labor agreement to expedite con-
11 struction of the pipeline.

12 **SEC. 12013. PARTICIPATION OF SMALL BUSINESS CON-**
13 **CERNS.**

14 (a) SENSE OF CONGRESS.—It is the sense of Con-
15 gress that an Alaska natural gas transportation project
16 will provide significant economic benefits to the United
17 States and Canada. In order to maximize those benefits,
18 Congress urges the sponsors of the pipeline project to
19 maximize the participation of small business concerns in
20 contracts and subcontracts awarded in carrying out the
21 project.

22 (b) STUDY.—

23 (1) IN GENERAL.—The Comptroller General
24 shall conduct a study on the extent to which small

1 business concerns participate in the construction of
2 oil and gas pipelines in the United States.

3 (2) REPORT.—Not later than 1 year after the
4 date of enactment of this Act, the Comptroller Gen-
5 eral shall transmit to Congress a report containing
6 the results of the study.

7 (3) UPDATES.—The Comptroller General shall
8 update the study at least once every 5 years and
9 transmit to Congress a report containing the results
10 of the update.

11 (4) APPLICABILITY.—After the date of comple-
12 tion of the construction of an Alaska natural gas
13 transportation project, this subsection shall no
14 longer apply.

15 (c) SMALL BUSINESS CONCERN DEFINED.—In this
16 section, the term “small business concern” has the mean-
17 ing given such term in section 3(a) of the Small Business
18 Act (15 U.S.C. 632(a)).

19 **SEC. 12014. ALASKA PIPELINE CONSTRUCTION TRAINING**
20 **PROGRAM.**

21 (a) ESTABLISHMENT OF PROGRAM.—The Secretary
22 of Labor (in this section referred to as the “Secretary”)
23 may make grants to the Alaska Department of Labor and
24 Workforce Development to—

1 (1) develop a plan to train, through the work-
2 force investment system established in the State of
3 Alaska under the Workforce Investment Act of 1998
4 (112 Stat. 936 et seq.), adult and dislocated work-
5 ers, including Alaska Natives, in urban and rural
6 Alaska in the skills required to construct and oper-
7 ate an Alaska gas pipeline system; and

8 (2) implement the plan developed pursuant to
9 paragraph (1).

10 (b) REQUIREMENTS FOR PLANNING GRANTS.—The
11 Secretary may make a grant under subsection (a)(1) only
12 if—

13 (1) the Governor of Alaska certifies in writing
14 to the Secretary that there is a reasonable expecta-
15 tion that construction of an Alaska gas pipeline will
16 commence within 3 years after the date of such cer-
17 tification; and

18 (2) the Secretary of the Interior concurs in
19 writing to the Secretary with the certification made
20 under paragraph (1).

21 (c) REQUIREMENTS FOR IMPLEMENTATION
22 GRANTS.—The Secretary may make a grant under sub-
23 section (a)(2) only if—

24 (1) the Secretary has approved a plan developed
25 pursuant to subsection (a)(1);

1 (2) the Governor of Alaska requests the grant
 2 funds and certifies in writing to the Secretary that
 3 there is a reasonable expectation that the construc-
 4 tion of an Alaska gas pipeline system will commence
 5 within 2 years after the date of such certification;

6 (3) the Secretary of the Interior concurs in
 7 writing to the Secretary with the certification made
 8 under paragraph (2) after considering—

9 (A) the status of necessary State and Fed-
 10 eral permits;

11 (B) the availability of financing for the
 12 pipeline project; and

13 (C) other relevant factors and cir-
 14 cumstances.

15 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 16 are authorized to be appropriated to the Secretary of
 17 Labor such sums as may be necessary, but not to exceed
 18 \$20,000,000, to carry out this section.

19 **Subtitle B—Strategic Petroleum** 20 **Reserve**

21 **SEC. 12101. FULL CAPACITY OF STRATEGIC PETROLEUM** 22 **RESERVE.**

23 The President shall—

24 (1) fill the Strategic Petroleum Reserve estab-
 25 lished pursuant to part B of title I of the Energy

1 Policy and Conservation Act (42 U.S.C. 6231 et
2 seq.) to full capacity as soon as practicable;

3 (2) acquire petroleum for the Strategic Petro-
4 leum Reserve by the most practicable and cost-effec-
5 tive means, with consideration being given to domes-
6 tically produced petroleum, including the acquisition
7 of crude oil the United States is entitled to receive
8 in kind as royalties from production on Federal
9 lands; and

10 (3) ensure that the fill rate minimizes impacts
11 on petroleum markets.

12 **SEC. 12102. STRATEGIC PETROLEUM RESERVE EXPANSION.**

13 (a) PLAN.—Not later than 180 days after the date
14 of the enactment of this Act, the Secretary of Energy shall
15 transmit to the Congress a plan for the expansion of the
16 Strategic Petroleum Reserve to 1,000,000,000 barrels, in-
17 cluding—

18 (1) plans for the elimination of infrastructure
19 impediments to maximum drawdown capability;

20 (2) a schedule for the completion of all required
21 environmental reviews;

22 (3) provision for consultation with Federal and
23 State environmental agencies;

24 (4) a schedule and procedures for site selection;
25 and

1 (5) anticipated annual budget requests.

2 (b) CONSTRUCTION OF ADDITIONAL CAPACITY.—The
3 Secretary of Energy shall acquire property and complete
4 construction for the expansion of the Strategic Petroleum
5 Reserve in accordance with the plan transmitted under
6 subsection (a).

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary of En-
9 ergy \$1,500,000,000 for carrying out this section, to re-
10 main available until expended.

11 **SEC. 12103. PERMANENT AUTHORITY TO OPERATE THE**
12 **STRATEGIC PETROLEUM RESERVE AND**
13 **OTHER ENERGY PROGRAMS.**

14 (a) AMENDMENT TO TITLE I OF THE ENERGY POL-
15 ICY AND CONSERVATION ACT.—Title I of the Energy Pol-
16 icy and Conservation Act (42 U.S.C. 6211 et seq.) is
17 amended—

18 (1) by striking section 166 (42 U.S.C. 6246)
19 and inserting—

20 “AUTHORIZATION OF APPROPRIATIONS

21 “SEC. 166. There are authorized to be appropriated
22 to the Secretary such sums as may be necessary to carry
23 out this part and part D, to remain available until ex-
24 pended.”;

25 (2) by striking section 186 (42 U.S.C. 6250e);
26 and

7 (1) by inserting before section 273 (42 U.S.C.
8 6283) the following:

11 (2) by striking section 273(e) (42 U.S.C.
12 6283(e); relating to the expiration of summer fill
13 and fuel budgeting programs); and

14 (3) by striking part D (42 U.S.C. 6285; relat-
15 ing to the expiration of title II of the Act).

19 (1) by inserting after the items relating to part
20 C of title I the following:

“Sec. 181. Establishment.
“Sec. 182. Authority.
“Sec. 183. Conditions for release; plan.
“Sec. 184. Northeast Home Heating Oil Reserve Account.
“Sec. 185. Exemptions.”;

HR 6 PCS

“PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

“Sec. 273. Summer fill and fuel budgeting programs.”; and

1 (3) by striking the items relating to part D of
2 title II.

3 (d) AMENDMENT TO THE ENERGY POLICY AND CON-
4 SERVATION ACT.—Section 183(b)(1) of the Energy Policy
5 and Conservation Act (42 U.S.C. 6250b(b)(1)) is amended
6 by inserting “(considered as a heating season average)”
7 after “mid-October through March”.

8 **Subtitle C—Hydraulic Fracturing**

9 **SEC. 12201. HYDRAULIC FRACTURING.**

10 Paragraph (1) of section 1421(d) of the Safe Drink-
11 ing Water Act (42 U.S.C. 300h(d)) is amended to read
12 as follows:

13 “(1) The term ‘underground injection’—

14 “(A) means the subsurface emplacement of
15 fluids by well injection; and

16 “(B) excludes—

17 “(i) the underground injection of nat-
18 ural gas for purposes of storage; and

19 “(ii) the underground injection of
20 fluids or propping agents pursuant to hy-
21 draulic fracturing operations related to oil
22 or gas production activities.”.

1 **Subtitle D—Unproven Oil and Nat-**
2 **ural Gas Reserves Recovery**
3 **Program**

4 **SEC. 12301. PROGRAM.**

5 The Secretary shall carry out a program to dem-
6 onstrate technologies for the recovery of oil and natural
7 gas reserves from reservoirs described in section 12302.

8 **SEC. 12302. ELIGIBLE RESERVOIRS.**

9 The program under this subtitle shall only address
10 oil and natural gas reservoirs with 1 or more of the fol-
11 lowing characteristics:

12 (1) Complex geology involving rapid changes in
13 the type and quality of the oil reservoir across the
14 reservoir.

15 (2) Low reservoir pressure.

16 (3) Unconventional natural gas reservoirs in
17 coalbeds, tight sands, or shales.

18 **SEC. 12303. FOCUS AREAS.**

19 The program under this subtitle may focus on areas
20 including coal-bed methane, deep drilling, natural gas pro-
21 duction from tight sands, natural gas production from gas
22 shales, innovative production techniques (including hori-
23 zontal drilling, fracture detection methodologies, and
24 three-dimensional seismic), and enhanced recovery tech-
25 niques.

1 **SEC. 12304. LIMITATION ON LOCATION OF ACTIVITIES.**

2 Activities under this subtitle shall be carried out
3 only—

4 (1) in—

5 (A) areas onshore in the United States on
6 public land administered by the Secretary of the
7 Interior available for oil and gas leasing, where
8 consistent with applicable law and land use
9 plans; and

10 (B) areas onshore in the United States on
11 State or private land, subject to applicable law;
12 and

13 (2) with the approval of the appropriate Fed-
14 eral or State land management agency or private
15 land owner.

16 **SEC. 12305. PROGRAM ADMINISTRATION.**

17 (a) **ROLE OF THE SECRETARY.**—The Secretary shall
18 have ultimate responsibility for, and oversight of, all as-
19 pects of the program under this subtitle.

20 (b) **ROLE OF THE PROGRAM CONSORTIUM.**—

21 (1) **IN GENERAL.**—The Secretary shall contract
22 with a consortium to—

23 (A) manage awards pursuant to subsection
24 (e)(4);

25 (B) make recommendations to the Sec-
26 retary for project solicitations;

1 (C) disburse funds awarded under sub-
2 section (e) as directed by the Secretary in ac-
3 cordance with the annual plan under subsection
4 (d); and

5 (D) carry out other activities assigned to
6 the program consortium by this section.

7 (2) LIMITATION.—The Secretary may not as-
8 sign any activities to the program consortium except
9 as specifically authorized under this section.

10 (3) CONFLICT OF INTEREST.—(A) The Sec-
11 retary shall establish procedures—

12 (i) to ensure that each board member, offi-
13 cer, or employee of the program consortium
14 who is in a decisionmaking capacity under sub-
15 section (e)(3) or (4) shall disclose to the Sec-
16 retary any financial interests in, or financial re-
17 lationships with, applicants for or recipients of
18 awards under this section, including those of
19 his or her spouse or minor child, unless such re-
20 lationships or interests would be considered to
21 be remote or inconsequential; and

22 (ii) to require any board member, officer,
23 or employee with a financial relationship or in-
24 terest disclosed under clause (i) to recuse him-
25 self or herself from any review under subsection

1 (e)(3) or oversight under subsection (e)(4) with
2 respect to such applicant or recipient.

3 (B) The Secretary may disqualify an applica-
4 tion or revoke an award under this section if a board
5 member, officer, or employee has failed to comply
6 with procedures required under subparagraph
7 (A)(ii).

8 (c) SELECTION OF THE PROGRAM CONSORTIUM.—

9 (1) IN GENERAL.—The Secretary shall select
10 the program consortium through an open, competi-
11 tive process.

12 (2) MEMBERS.—The program consortium may
13 include corporations and institutions of higher edu-
14 cation. The Secretary shall give preference in the se-
15 lection of the program consortium to applicants with
16 broad representation from the various major oil and
17 natural gas basins in the United States. After sub-
18 mitting a proposal under paragraph (4), the pro-
19 gram consortium may not add members without the
20 consent of the Secretary.

21 (3) TAX STATUS.—The program consortium
22 shall be an entity that is exempt from tax under sec-
23 tion 501(c)(3) of the Internal Revenue Code of
24 1986.

1 (4) SCHEDULE.—Not later than 90 days after
2 the date of enactment of this Act, the Secretary
3 shall solicit proposals for the creation of the pro-
4 gram consortium, which must be submitted not less
5 than 180 days after the date of enactment of this
6 Act. The Secretary shall select the program consor-
7 tium not later than 240 days after such date of en-
8 actment.

9 (5) APPLICATION.—Applicants shall submit a
10 proposal including such information as the Secretary
11 may require. At a minimum, each proposal shall—

12 (A) list all members of the consortium;

13 (B) fully describe the structure of the con-
14 sortium, including any provisions relating to in-
15 tellectual property; and –

16 (C) describe how the applicant would carry
17 out the activities of the program consortium
18 under this section.

19 (6) ELIGIBILITY.—To be eligible to be selected
20 as the program consortium, an applicant must be an
21 entity whose members collectively have demonstrated
22 capabilities in planning and managing programs for
23 the production of oil or natural gas.

24 (7) CRITERION.—The Secretary may consider
25 the amount of the fee an applicant proposes to re-

1 ceive under subsection (f) in selecting a consortium
2 under this section.

3 (d) ANNUAL PLAN.—

4 (1) IN GENERAL.—The program under this
5 subtitle shall be carried out pursuant to an annual
6 plan prepared by the Secretary in accordance with
7 paragraph (2).

8 (2) DEVELOPMENT.—(A) Before drafting an
9 annual plan under this subsection, the Secretary
10 shall solicit specific written recommendations from
11 the program consortium for each element to be ad-
12 dressed in the plan, including those described in
13 paragraph (4). The Secretary may request that the
14 program consortium submit its recommendations in
15 the form of a draft annual plan.

16 (B) The Secretary shall submit the rec-
17 ommendations of the program consortium under
18 subparagraph (A) to the Advisory Committee for re-
19 view, and the Advisory Committee shall provide to
20 the Secretary written comments by a date deter-
21 mined by the Secretary. The Secretary may also so-
22 licit comments from any other experts.

23 (C) The Secretary shall consult regularly with
24 the program consortium throughout the preparation
25 of the annual plan.

1 (3) PUBLICATION.—The Secretary shall trans-
2 mit to the Congress and publish in the Federal Reg-
3 ister the annual plan, along with any written com-
4 ments received under paragraph (2)(A) and (B).
5 The annual plan shall be transmitted and published
6 not later than 60 days after the date of enactment
7 of an Act making appropriations for a fiscal year for
8 the program under this subtitle.

9 (4) CONTENTS.—The annual plan shall describe
10 the ongoing and prospective activities of the pro-
11 gram under this subtitle and shall include—

12 (A) a list of any solicitations for awards
13 that the Secretary plans to issue to carry out
14 activities, including the topics for such work,
15 who would be eligible to apply, selection cri-
16 teria, and the duration of awards; and

17 (B) a description of the activities expected
18 of the program consortium to carry out sub-
19 section (e)(4).

20 (e) AWARDS.—

21 (1) IN GENERAL.—The Secretary shall make
22 awards to carry out activities under the program
23 under this subtitle. The program consortium shall
24 not be eligible to receive such awards, but members
25 of the program consortium may receive such awards.

1 (2) PROPOSALS.—

2 (A) SOLICITATION.—The Secretary shall
3 solicit proposals for awards under this sub-
4 section in such manner and at such time as the
5 Secretary may prescribe, in consultation with
6 the program consortium.

7 (B) CONTENTS.—Each proposal submitted
8 shall include the following:

9 (i) An estimate of the potential
10 unproven reserves in the reservoir, estab-
11 lished by a registered petroleum engineer.

12 (ii) An estimate of the potential for
13 success of the project.

14 (iii) A detailed project plan.

15 (iv) A detailed analysis of the costs
16 associated with the project.

17 (v) A time frame for project comple-
18 tion.

19 (vi) Evidence that any lienholder on
20 the project will subordinate its interests to
21 the extent necessary to ensure that the
22 Federal government receives its portion of
23 any revenues pursuant to section 12308.

24 (vii) Such other matters as the Sec-
25 retary considers appropriate.

1 (3) REVIEW.—The Secretary shall make awards
2 under this subsection through a competitive process,
3 which shall include a review by individuals selected
4 by the Secretary. Such individuals shall include, for
5 each application, Federal officials, the program con-
6 sortium, and non-Federal experts who are not board
7 members, officers, or employees of the program con-
8 sortium or of a member of the program consortium.

9 (4) OVERSIGHT.—(A) The program consortium
10 shall oversee the implementation of awards under
11 this subsection, consistent with the annual plan
12 under subsection (d), including disbursing funds and
13 monitoring activities carried out under such awards
14 for compliance with the terms and conditions of the
15 awards.

16 (B) Nothing in subparagraph (A) shall limit the
17 authority or responsibility of the Secretary to over-
18 see awards, or limit the authority of the Secretary
19 to review or revoke awards.

20 (C) The Secretary shall provide to the program
21 consortium the information necessary for the pro-
22 gram consortium to carry out its responsibilities
23 under this paragraph.

24 (f) FEE.—To compensate the program consortium
25 for carrying out its activities under this section, the Sec-

1 retary shall provide to the program consortium a fee in
2 an amount not to exceed 7.5 percent of the amounts
3 awarded under subsection (e) for each fiscal year.

4 (g) **DISALLOWED EXPENSES.**—No portion of any
5 award shall be used by a recipient for general or adminis-
6 trative expenses of any kind.

7 (h) **AUDIT.**—The Secretary shall retain an inde-
8 pendent, commercial auditor to determine the extent to
9 which funds provided to the program consortium, and
10 funds provided under awards made under subsection (e),
11 have been expended in a manner consistent with the pur-
12 poses and requirements of this subtitle. The auditor shall
13 transmit a report annually to the Secretary, who shall
14 transmit the report to Congress, along with a plan to rem-
15 edy any deficiencies cited in the report.

16 **SEC. 12306. ADVISORY COMMITTEE.**

17 (a) **ESTABLISHMENT.**—Not later than 270 days after
18 the date of enactment of this Act, the Secretary shall es-
19 tablish an Advisory Committee.

20 (b) **MEMBERSHIP.**—The Advisory Committee shall be
21 composed of members appointed by the Secretary and in-
22 cluding—

23 (1) individuals with extensive experience or
24 operational knowledge of oil and natural gas produc-
25 tion, including independent oil and gas producers;

1 (2) individuals broadly representative of oil and
2 natural gas production; and

3 (3) no individuals who are Federal employees.

4 (c) DUTIES.—The Advisory Committee shall advise
5 the Secretary on the development and implementation of
6 activities under this subtitle.

7 (d) COMPENSATION.—A member of the Advisory
8 Committee shall serve without compensation but shall re-
9 ceive travel expenses, including per diem in lieu of subsist-
10 ence, in accordance with applicable provisions under sub-
11 chapter I of chapter 57 of title 5, United States Code.

12 (e) PROHIBITION.—The Advisory Committee shall
13 not make recommendations on funding awards to con-
14 sortia or for specific projects.

15 **SEC. 12307. LIMITS ON PARTICIPATION.**

16 An entity shall be eligible to receive an award under
17 this subtitle only if the Secretary finds—

18 (1) that the entity's participation in the pro-
19 gram under this subtitle would be in the economic
20 interest of the United States;

21 (2) that the entity is a United States-owned en-
22 tity organized under the laws of the United States
23 with production levels of less than 1,000 barrels per
24 day of oil equivalent; and

1 (3) that the entity has demonstrated that non-
2 governmental third party sources of financing are
3 not available for the proposal project.

4 **SEC. 12308. PAYMENTS TO FEDERAL GOVERNMENT.**

5 (a) INITIAL RATE.—Until the amount of a grant
6 under this subtitle has been fully repaid to the Federal
7 Government under this subsection, 95 percent of all reve-
8 nues derived from increased incremental production at-
9 tributable to participation in the program under this sub-
10 title shall be paid to the Secretary by the purchaser of
11 such increased production.

12 (b) RATE AFTER REPAYMENT.—After the Federal
13 Government has been fully repaid under subsection (a),
14 5 percent of all revenues derived from increased incre-
15 mental production attributable to participation in the pro-
16 gram under this subtitle shall be paid to the Secretary
17 by the purchaser of such increased production.

18 **SEC. 12309. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated to the Sec-
20 retary for carrying out this subtitle \$100,000,000, to re-
21 main available until expended.

22 **SEC. 12310. PUBLIC AVAILABILITY OF PROJECT RESULTS**
23 **AND METHODOLOGIES.**

24 The results of any project undertaken pursuant to
25 this subtitle and the methodologies used to achieve those

1 results shall be made public by the Secretary. The meth-
 2 odologies used shall not be proprietary so that such meth-
 3 odologies may be used for other projects by persons not
 4 seeking awards pursuant to this subtitle.

5 **SEC. 12311. SUNSET.**

6 The authority provided by this subtitle shall termi-
 7 nate on September 30, 2010.

8 **SEC. 12312. DEFINITIONS.**

9 In this subtitle:

10 (1) PROGRAM CONSORTIUM.—The term “pro-
 11 gram consortium” means the consortium selected
 12 under section 12305(c).

13 (2) REMOTE OR INCONSEQUENTIAL.—The term
 14 “remote or inconsequential” has the meaning given
 15 that term in regulations issued by the Office of Gov-
 16 ernment Ethics under section 208(b)(2) of title 18,
 17 United States Code.

18 (3) SECRETARY.—The term “Secretary” means
 19 the Secretary of Energy.

20 **Subtitle E—Miscellaneous**

21 **SEC. 12401. APPEALS RELATING TO PIPELINE CONSTRUC-**
 22 **TION PROJECTS.**

23 (a) AGENCY OF RECORD.—Any Federal administra-
 24 tive agency proceeding that is an appeal or review of Fed-
 25 eral authority for an interstate natural gas pipeline con-

1 struction project, including construction of natural gas
2 storage and liquefied natural gas facilities, shall use as
3 its exclusive record for all purposes the record compiled
4 by the Federal Energy Regulatory Commission pursuant
5 to such Commission's proceeding under section 7 of the
6 Natural Gas Act.

7 (b) SENSE OF THE CONGRESS.—It is the sense of
8 the Congress that all Federal and State agencies with ju-
9 risdiction over interstate natural gas pipeline construction
10 activities should coordinate their proceedings within the
11 time frames established by the Federal Energy Regulatory
12 Commission while it is acting pursuant to section 7 of the
13 Natural Gas Act to determine whether a proposed inter-
14 state natural gas pipeline is in the public convenience and
15 necessity.

16 **SEC. 12402. NATURAL GAS MARKET DATA TRANSPARENCY.**

17 (a) ESTABLISHMENT OF SYSTEM.—Not later than
18 180 days after the date of enactment of this Act, the Fed-
19 eral Energy Regulatory Commission shall issue rules au-
20 thorizing or establishing an electronic information system
21 to provide the Commission and the public with timely ac-
22 cess to such information as is necessary or appropriate
23 to facilitate price transparency and participation in nat-
24 ural gas markets. Such system shall provide information

1 about the market price of natural gas sold in interstate
2 commerce.

3 (b) DATA SUBJECT TO DISCLOSURE.—Rules issued
4 under subsection (a) shall require public availability only
5 of—

6 (1) aggregate data; and

7 (2) transaction-specific data that is otherwise
8 required by the Federal Energy Regulatory Commis-
9 sion to be made public.

10 (c) CIVIL PENALTY.—Any person who violates any
11 provision of a rule issued under subsection (a) shall be
12 subject to a civil penalty of not more than \$1,000,000 for
13 each day that such violation continues. Such penalty shall
14 be assessed by the Federal Energy Regulatory Commis-
15 sion, after notice and opportunity for public hearing. In
16 determining the amount of a proposed penalty, the Com-
17 mission shall take into consideration the seriousness of the
18 violation and the efforts of such person to remedy the vio-
19 lation in a timely manner.

20 **SEC. 12403. OIL AND GAS EXPLORATION AND PRODUCTION**
21 **DEFINED.**

22 Section 502 of the Federal Water Pollution Control
23 Act (33 U.S.C. 1362) is amended by adding at the end
24 the following:

9 The Secretary, in coordination with industry leaders
10 in extended reach drilling technology, shall establish a
11 Complex Well Technology Testing Facility at the Rocky
12 Mountain Oilfield Testing Center to increase the range of
13 extended drilling technology to 50,000 feet, so that more
14 energy resources can be realized with fewer drilling faci-
15 ties.

18 **SEC. 13001. ALTERNATIVE CONDITIONS AND FISHWAYS.**

HR 6 PCS

1 hearing of any disputed issues of material fact, with re-
2 spect to such conditions.”.

3 (b) FISHWAYS.—Section 18 of the Federal Power Act
4 (16 U.S.C. 811) is amended by inserting after “and such
5 fishways as may be prescribed by the Secretary of Com-
6 merce.” the following: “The license applicant shall be enti-
7 tled to a determination on the record, after opportunity
8 for an agency trial-type hearing of any disputed issues of
9 material fact, with respect to such fishways.”.

10 (c) ALTERNATIVE CONDITIONS AND PRESCRIP-
11 TIONS.—Part I of the Federal Power Act (16 U.S.C. 791a
12 et seq.) is amended by adding the following new section
13 at the end thereof:

14 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

15 “(a) ALTERNATIVE CONDITIONS.—(1) Whenever any
16 person applies for a license for any project works within
17 any reservation of the United States, and the Secretary
18 of the department under whose supervision such reserva-
19 tion falls (referred to in this subsection as ‘the Secretary’)
20 deems a condition to such license to be necessary under
21 the first proviso of section 4(e), the license applicant may
22 propose an alternative condition.

23 “(2) Notwithstanding the first proviso of section 4(e),
24 the Secretary shall accept the proposed alternative condi-
25 tion referred to in paragraph (1), and the Commission

1 shall include in the license such alternative condition, if
2 the Secretary determines, based on substantial evidence
3 provided by the license applicant or otherwise available to
4 the Secretary, that such alternative condition—

5 “(A) provides for the adequate protection and
6 utilization of the reservation; and

7 “(B) will either—

8 “(i) cost less to implement; or

9 “(ii) result in improved operation of the
10 project works for electricity production,
11 as compared to the condition initially deemed nec-
12 essary by the Secretary.

13 “(3) The Secretary shall submit into the public
14 record of the Commission proceeding with any condition
15 under section 4(e) or alternative condition it accepts under
16 this section, a written statement explaining the basis for
17 such condition, and reason for not accepting any alter-
18 native condition under this section. The written statement
19 must demonstrate that the Secretary gave equal consider-
20 ation to the effects of the condition adopted and alter-
21 natives not accepted on energy supply, distribution, cost,
22 and use; flood control; navigation; water supply; and air
23 quality (in addition to the preservation of other aspects
24 of environmental quality); based on such information as
25 may be available to the Secretary, including information

1 voluntarily provided in a timely manner by the applicant
2 and others. The Secretary shall also submit, together with
3 the aforementioned written statement, all studies, data,
4 and other factual information available to the Secretary
5 and relevant to the Secretary's decision.

6 “(4) Nothing in this section shall prohibit other inter-
7 ested parties from proposing alternative conditions.

8 “(5) If the Secretary does not accept an applicant's
9 alternative condition under this section, and the Commis-
10 sion finds that the Secretary's condition would be incon-
11 sistent with the purposes of this part, or other applicable
12 law, the Commission may refer the dispute to the Commis-
13 sion's Dispute Resolution Service. The Dispute Resolution
14 Service shall consult with the Secretary and the Commis-
15 sion and issue a non-binding advisory within 90 days. The
16 Secretary may accept the Dispute Resolution Service advi-
17 sory unless the Secretary finds that the recommendation
18 will not adequately protect the reservation. The Secretary
19 shall submit the advisory and the Secretary's final written
20 determination into the record of the Commission's pro-
21 ceeding.

22 “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever
23 the Secretary of the Interior or the Secretary of Commerce
24 prescribes a fishway under section 18, the license appli-
25 cant or licensee may propose an alternative to such pre-

1 scription to construct, maintain, or operate a fishway. The
2 alternative may include a fishway or an alternative to a
3 fishway.

4 “(2) Notwithstanding section 18, the Secretary of the
5 Interior or the Secretary of Commerce, as appropriate,
6 shall accept and prescribe, and the Commission shall re-
7 quire, the proposed alternative referred to in paragraph
8 (1), if the Secretary of the appropriate department deter-
9 mines, based on substantial evidence provided by the li-
10 censee or otherwise available to the Secretary, that such
11 alternative—

12 “(A) will be no less protective of the fish re-
13 sources than the fishway initially prescribed by the
14 Secretary; and

15 “(B) will either—

16 “(i) cost less to implement; or

17 “(ii) result in improved operation of the
18 project works for electricity production,

19 as compared to the fishway initially deemed nec-
20 essary by the Secretary.

21 “(3) The Secretary concerned shall submit into the
22 public record of the Commission proceeding with any pre-
23 scription under section 18 or alternative prescription it ac-
24 cepts under this section, a written statement explaining
25 the basis for such prescription, and reason for not accept-

1 ing any alternative prescription under this section. The
2 written statement must demonstrate that the Secretary
3 gave equal consideration to the effects of the condition
4 adopted and alternatives not accepted on energy supply,
5 distribution, cost, and use; flood control; navigation; water
6 supply; and air quality (in addition to the preservation of
7 other aspects of environmental quality); based on such in-
8 formation as may be available to the Secretary, including
9 information voluntarily provided in a timely manner by the
10 applicant and others. The Secretary shall also submit, to-
11 gether with the aforementioned written statement, all
12 studies, data, and other factual information available to
13 the Secretary and relevant to the Secretary's decision.

14 “(4) Nothing in this section shall prohibit other inter-
15 ested parties from proposing alternative prescriptions.

16 “(5) If the Secretary concerned does not accept an
17 applicant's alternative prescription under this section, and
18 the Commission finds that the Secretary's prescription
19 would be inconsistent with the purposes of this part, or
20 other applicable law, the Commission may refer the dis-
21 pute to the Commission's Dispute Resolution Service. The
22 Dispute Resolution Service shall consult with the Sec-
23 retary and the Commission and issue a non-binding advi-
24 sory within 90 days. The Secretary may accept the Dis-
25 pute Resolution Service advisory unless the Secretary

1 finds that the recommendation will not adequately protect
2 the fish resources. The Secretary shall submit the advisory
3 and the Secretary's final written determination into the
4 record of the Commission's proceeding.''.
5

6 **Subtitle B—Additional Hydropower**

7 **SEC. 13201. HYDROELECTRIC PRODUCTION INCENTIVES.**

8 (a) INCENTIVE PAYMENTS.—For electric energy gen-
9 erated and sold by a qualified hydroelectric facility during
10 the incentive period, the Secretary of Energy (referred to
11 in this section as the “Secretary”) shall make, subject to
12 the availability of appropriations, incentive payments to
13 the owner or operator of such facility. The amount of such
14 payment made to any such owner or operator shall be as
15 determined under subsection (e) of this section. Payments
16 under this section may only be made upon receipt by the
17 Secretary of an incentive payment application which estab-
18 lishes that the applicant is eligible to receive such payment
19 and which satisfies such other requirements as the Sec-
20 retary deems necessary. Such application shall be in such
21 form, and shall be submitted at such time, as the Sec-
22 retary shall establish.

23 (b) DEFINITIONS.—For purposes of this section:

24 (1) QUALIFIED HYDROELECTRIC FACILITY.—

25 The term “qualified hydroelectric facility” means a
turbine or other generating device owned or solely

1 operated by a non-Federal entity which generates
2 hydroelectric energy for sale and which is added to
3 an existing dam or conduit.

4 (2) EXISTING DAM OR CONDUIT.—The term
5 “existing dam or conduit” means any dam or con-
6 duit the construction of which was completed before
7 the date of the enactment of this section and which
8 does not require any construction or enlargement of
9 impoundment or diversion structures (other than re-
10 pair or reconstruction) in connection with the instal-
11 lation of a turbine or other generating device.

12 (3) CONDUIT.—The term “conduit” has the
13 same meaning as when used in section 30(a)(2) of
14 the Federal Power Act.

15 The terms defined in this subsection shall apply without
16 regard to the hydroelectric kilowatt capacity of the facility
17 concerned, without regard to whether the facility uses a
18 dam owned by a governmental or nongovernmental entity,
19 and without regard to whether the facility begins oper-
20 ation on or after the date of the enactment of this section.

21 (c) ELIGIBILITY WINDOW.—Payments may be made
22 under this section only for electric energy generated from
23 a qualified hydroelectric facility which begins operation
24 during the period of 10 fiscal years beginning with the

1 first full fiscal year occurring after the date of enactment
2 of this subtitle.

3 (d) INCENTIVE PERIOD.—A qualified hydroelectric
4 facility may receive payments under this section for a pe-
5 riod of 10 fiscal years (referred to in this section as the
6 “incentive period”). Such period shall begin with the fiscal
7 year in which electric energy generated from the facility
8 is first eligible for such payments.

9 (e) AMOUNT OF PAYMENT.—

10 (1) IN GENERAL.—Payments made by the Sec-
11 retary under this section to the owner or operator of
12 a qualified hydroelectric facility shall be based on
13 the number of kilowatt hours of hydroelectric energy
14 generated by the facility during the incentive period.
15 For any such facility, the amount of such payment
16 shall be 1.8 cents per kilowatt hour (adjusted as
17 provided in paragraph (2)), subject to the avail-
18 ability of appropriations under subsection (g), except
19 that no facility may receive more than \$750,000 in
20 one calendar year.

21 (2) ADJUSTMENTS.—The amount of the pay-
22 ment made to any person under this section as pro-
23 vided in paragraph (1) shall be adjusted for inflation
24 for each fiscal year beginning after calendar year
25 2003 in the same manner as provided in the provi-

1 sions of section 29(d)(2)(B) of the Internal Revenue
2 Code of 1986, except that in applying such provi-
3 sions the calendar year 2003 shall be substituted for
4 calendar year 1979.

5 (f) SUNSET.—No payment may be made under this
6 section to any qualified hydroelectric facility after the ex-
7 piration of the period of 20 fiscal years beginning with
8 the first full fiscal year occurring after the date of enact-
9 ment of this subtitle, and no payment may be made under
10 this section to any such facility after a payment has been
11 made with respect to such facility for a period of 10 fiscal
12 years.

13 (g) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the Secretary to carry
15 out the purposes of this section \$10,000,000 for each of
16 the fiscal years 2004 through 2013.

17 **SEC. 13202. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

18 (a) INCENTIVE PAYMENTS.—The Secretary of En-
19 ergy shall make incentive payments to the owners or oper-
20 ators of hydroelectric facilities at existing dams to be used
21 to make capital improvements in the facilities that are di-
22 rectly related to improving the efficiency of such facilities
23 by at least 3 percent.

24 (b) LIMITATIONS.—Incentive payments under this
25 section shall not exceed 10 percent of the costs of the cap-

1 ital improvement concerned and not more than one pay-
2 ment may be made with respect to improvements at a sin-
3 gle facility. No payment in excess of \$750,000 may be
4 made with respect to improvements at a single facility.

5 (c) AUTHORIZATION.—There is authorized to be ap-
6 propriated to carry out this section not more than
7 \$10,000,000 for each of the fiscal years 2004 through
8 2013.

9 **SEC. 13203. SMALL HYDROELECTRIC POWER PROJECTS.**

10 Section 408(a)(6) of the Public Utility Regulatory
11 Policies Act of 1978 is amended by striking “April 20,
12 1977” and inserting “March 4, 2003”.

13 **SEC. 13204. INCREASED HYDROELECTRIC GENERATION AT**
14 **EXISTING FEDERAL FACILITIES.**

15 (a) IN GENERAL.—The Secretary of Energy, in con-
16 sultation with the Secretary of the Interior and Secretary
17 of the Army, shall conduct studies of the cost-effective op-
18 portunities to increase hydropower generation at existing
19 federally-owned or operated water regulation, storage, and
20 conveyance facilities. Such studies shall be completed with-
21 in two years after the date of enactment of this subtitle
22 and transmitted to the Committee on Commerce of the
23 House of Representatives and the Committee on Energy
24 and Natural Resources of the Senate. An individual study
25 shall be prepared for each of the Nation’s principal river

1 basins. Each such study shall identify and describe with
2 specificity the following matters:

3 (1) Opportunities to improve the efficiency of
4 hydropower generation at such facilities through, but
5 not limited to, mechanical, structural, or operational
6 changes.

7 (2) Opportunities to improve the efficiency of
8 the use of water supplied or regulated by Federal
9 projects where such improvement could, in the ab-
10 sence of legal or administrative constraints, make
11 additional water supplies available for hydropower
12 generation or reduce project energy use.

13 (3) Opportunities to create additional hydro-
14 power generating capacity at existing facilities
15 through, but not limited to, the construction of addi-
16 tional generating facilities, the uprating of genera-
17 tors and turbines, and the construction of pumped
18 storage facilities.

19 (4) Preliminary assessment of the costs and the
20 economic and environmental consequences of such
21 measures.

22 (b) PREVIOUS STUDIES.—If studies of the type re-
23 quired by subsection (a) have been prepared by any agency
24 of the United States and published within the five years
25 prior to the date of enactment of this subtitle, the Sec-

1 retary of Energy may choose not to perform new studies
 2 and incorporate the information in such studies into the
 3 studies required by subsection (a).

4 (c) AUTHORIZATION.—There is authorized to be ap-
 5 propriated such sums as may be necessary to carry out
 6 the purposes of this section.

7 **TITLE IV—NUCLEAR MATTERS**
 8 **Subtitle A—Price-Anderson Act**
 9 **Amendments**

10 **SEC. 14001. SHORT TITLE.**

11 This subtitle may be cited as the “Price-Anderson
 12 Amendments Act of 2003”.

13 **SEC. 14002. EXTENSION OF INDEMNIFICATION AUTHORITY.**

14 (a) INDEMNIFICATION OF NUCLEAR REGULATORY
 15 COMMISSION LICENSEES.—Section 170 c. of the Atomic
 16 Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

17 (1) in the subsection heading, by striking “LI-
 18 censes” and inserting “LICENSEES”; and

19 (2) by striking “December 31, 2003” each
 20 place it appears and inserting “August 1, 2017”.

21 (b) INDEMNIFICATION OF DEPARTMENT OF ENERGY
 22 CONTRACTORS.—Section 170 d.(1)(A) of the Atomic En-
 23 ergy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended
 24 by striking “December 31, 2004” and inserting “August
 25 1, 2017”.

1 (c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL
2 INSTITUTIONS.—Section 170 k. of the Atomic Energy Act
3 of 1954 (42 U.S.C. 2210(k)) is amended by striking “Au-
4 gust 1, 2002” each place it appears and inserting “August
5 1, 2017”.

6 **SEC. 14003. MAXIMUM ASSESSMENT.**

7 Section 170 of the Atomic Energy Act of 1954 (42
8 U.S.C. 2210) is amended—

9 (1) in subsection b.(1), in the second proviso of
10 the third sentence—

11 (A) by striking “\$63,000,000” and insert-
12 ing “\$94,000,000”; and

13 (B) by striking “\$10,000,000 in any 1
14 year” and inserting “\$15,000,000 in any 1 year
15 (subject to adjustment for inflation under sub-
16 section t.)”; and

17 (2) in subsection t.—

18 (A) by inserting “total and annual” after
19 “amount of the maximum”;

20 (B) by striking “the date of the enactment
21 of the Price-Anderson Amendments Act of
22 1988” and inserting “July 1, 2002”; and

23 (C) by striking “such date of enactment”
24 and inserting “July 1, 2002”.

1 **SEC. 14004. DEPARTMENT OF ENERGY LIABILITY LIMIT.**

2 (a) INDEMNIFICATION OF DEPARTMENT OF ENERGY
3 CONTRACTORS.—Section 170 d. of the Atomic Energy Act
4 of 1954 (42 U.S.C. 2210(d)) is amended by striking para-
5 graph (2) and inserting the following:

6 “(2) In an agreement of indemnification entered into
7 under paragraph (1), the Secretary—

8 “(A) may require the contractor to provide and
9 maintain the financial protection of such a type and
10 in such amounts as the Secretary shall determine to
11 be appropriate to cover public liability arising out of
12 or in connection with the contractual activity; and

13 “(B) shall indemnify the persons indemnified
14 against such liability above the amount of the finan-
15 cial protection required, in the amount of
16 \$10,000,000,000 (subject to adjustment for inflation
17 under subsection t.), in the aggregate, for all per-
18 sons indemnified in connection with the contract and
19 for each nuclear incident, including such legal costs
20 of the contractor as are approved by the Secretary.”.

21 (b) CONTRACT AMENDMENTS.—Section 170 d. of the
22 Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is
23 amended by striking paragraph (3) and inserting the fol-
24 lowing:

25 “(3) All agreements of indemnification under which
26 the Department of Energy (or its predecessor agencies)

1 may be required to indemnify any person under this sec-
2 tion shall be deemed to be amended, on the date of enact-
3 ment of the Price-Anderson Amendments Act of 2003, to
4 reflect the amount of indemnity for public liability and any
5 applicable financial protection required of the contractor
6 under this subsection.”.

7 (c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the
8 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is
9 amended—

10 (1) by striking “the maximum amount of finan-
11 cial protection required under subsection b. or”; and

12 (2) by striking “paragraph (3) of subsection d.,
13 whichever amount is more” and inserting “para-
14 graph (2) of subsection d.”.

15 **SEC. 14005. INCIDENTS OUTSIDE THE UNITED STATES.**

16 (a) AMOUNT OF INDEMNIFICATION.—Section 170
17 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.
18 2210(d)(5)) is amended by striking “\$100,000,000” and
19 inserting “\$500,000,000”.

20 (b) LIABILITY LIMIT.—Section 170 e.(4) of the
21 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is
22 amended by striking “\$100,000,000” and inserting
23 “\$500,000,000”.

1 **SEC. 14006. REPORTS.**

2 Section 170 p. of the Atomic Energy Act of 1954 (42
3 U.S.C. 2210(p)) is amended by striking “August 1, 1998”
4 and inserting “August 1, 2013”.

5 **SEC. 14007. INFLATION ADJUSTMENT.**

6 Section 170 t. of the Atomic Energy Act of 1954 (42
7 U.S.C. 2210(t)) is amended—

8 (1) by redesignating paragraph (2) as para-
9 graph (3); and

10 (2) by adding after paragraph (1) the following:

11 “(2) The Secretary shall adjust the amount of indem-
12 nification provided under an agreement of indemnification
13 under subsection d. not less than once during each 5-year
14 period following July 1, 2002, in accordance with the ag-
15 gregate percentage change in the Consumer Price Index
16 since—

17 “(A) that date, in the case of the first adjust-
18 ment under this paragraph; or

19 “(B) the previous adjustment under this para-
20 graph.”.

21 **SEC. 14008. PRICE-ANDERSON TREATMENT OF MODULAR**
22 **REACTORS.**

23 Section 170 b. of the Atomic Energy Act of 1954 (42
24 U.S.C. 2210(b)) is amended by adding at the end the fol-
25 lowing new paragraph:

1 “(5)(A) For purposes of this section only, the Com-
 2 mission shall consider a combination of facilities described
 3 in subparagraph (B) to be a single facility having a rated
 4 capacity of 100,000 electrical kilowatts or more.

5 “(B) A combination of facilities referred to in sub-
 6 paragraph (A) is 2 or more facilities located at a single
 7 site, each of which has a rated capacity of 100,000 elec-
 8 trical kilowatts or more but not more than 300,000 elec-
 9 trical kilowatts, with a combined rated capacity of not
 10 more than 1,300,000 electrical kilowatts.”.

11 **SEC. 14009. APPLICABILITY.**

12 The amendments made by sections 14003, 14004,
 13 and 14005 do not apply to a nuclear incident that occurs
 14 before the date of enactment of this Act.

15 **SEC. 14010. PROHIBITION ON ASSUMPTION BY UNITED**
 16 **STATES GOVERNMENT OF LIABILITY FOR**
 17 **CERTAIN FOREIGN ACCIDENTS.**

18 Section 170 of the Atomic Energy Act of 1954 (42
 19 U.S.C. 2210) is amended by adding at the end the fol-
 20 lowing new subsection:

21 “u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR
 22 CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this
 23 section or any other provision of law, no officer of the
 24 United States or of any department, agency, or instrumen-
 25 tality of the United States Government may enter into any

1 contract or other arrangement, or into any amendment or
2 modification of a contract or other arrangement, the pur-
3 pose or effect of which would be to directly or indirectly
4 impose liability on the United States Government, or any
5 department, agency, or instrumentality of the United
6 States Government, or to otherwise directly or indirectly
7 require an indemnity by the United States Government,
8 for nuclear accidents occurring in connection with the de-
9 sign, construction, or operation of a production facility or
10 utilization facility in any country whose government has
11 been identified by the Secretary of State as engaged in
12 state sponsorship of terrorist activities (specifically includ-
13 ing any country the government of which, as of September
14 11, 2001, had been determined by the Secretary of State
15 under section 620A(a) of the Foreign Assistance Act of
16 1961, section 6(j)(1) of the Export Administration Act of
17 1979, or section 40(d) of the Arms Export Control Act
18 to have repeatedly provided support for acts of inter-
19 national terrorism).”.

20 **SEC. 14011. SECURE TRANSFER OF NUCLEAR MATERIALS.**

21 (a) AMENDMENT.—Chapter 14 of the Atomic Energy
22 Act of 1954 (42 U.S.C. 2201–2210b) is amended by add-
23 ing at the end the following new section:

24 “SEC. 170C. SECURE TRANSFER OF NUCLEAR MA-
25 TERIALS.—

1 “a. The Nuclear Regulatory Commission shall estab-
2 lish a system to ensure that, with respect to activities by
3 any party pursuant to a license issued under this Act—

4 “(1) materials described in subsection b., when
5 transferred or received in the United States—

6 “(A) from a facility licensed by the Nu-
7 clear Regulatory Commission;

8 “(B) from a facility licensed by an agree-
9 ment State; or

10 “(C) from a country with whom the United
11 States has an agreement for cooperation under
12 section 123,

13 are accompanied by a manifest describing the type
14 and amount of materials being transferred;

15 “(2) each individual transferring or accom-
16 panying the transfer of such materials has been sub-
17 ject to a security background check by appropriate
18 Federal entities; and

19 “(3) such materials are not transferred to or
20 received at a destination other than a facility li-
21 censed by the Nuclear Regulatory Commission or an
22 agreement State under this Act or other appropriate
23 Federal facility, or a destination outside the United
24 States in a country with whom the United States
25 has an agreement for cooperation under section 123.

1 “b. Except as otherwise provided by the Commission
2 by regulation, the materials referred to in subsection a.
3 are byproduct materials, source materials, special nuclear
4 materials, high-level radioactive waste, spent nuclear fuel,
5 transuranic waste, and low-level radioactive waste (as de-
6 fined in section 2(16) of the Nuclear Waste Policy Act
7 of 1982 (42 U.S.C. 10101(16))).”.

8 (b) REGULATIONS.—Not later than 1 year after the
9 date of the enactment of this Act, and from time to time
10 thereafter as it considers necessary, the Nuclear Regu-
11 latory Commission shall issue regulations identifying ra-
12 dioactive materials that, consistent with the protection of
13 public health and safety and the common defense and se-
14 curity, are appropriate exceptions to the requirements of
15 section 170C of the Atomic Energy Act of 1954, as added
16 by subsection (a) of this section.

17 (c) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall take effect upon the issuance of regu-
19 lations under subsection (b).

20 (d) EFFECT ON OTHER LAW.—Nothing in this sec-
21 tion or the amendment made by this section shall waive,
22 modify, or affect the application of chapter 51 of title 49,
23 United States Code, part A of subtitle V of title 49,
24 United States Code, part B of subtitle VI of title 49,
25 United States Code, and title 23, United States Code.

1 (e) TABLE OF SECTIONS AMENDMENT.—The table of
2 sections for chapter 14 of the Atomic Energy Act of 1954
3 is amended by adding at the end the following new item:

“Sec. 170C. Secure transfer of nuclear materials.”.

4 **SEC. 14012. NUCLEAR FACILITY THREATS.**

5 (a) STUDY.—The President, in consultation with the
6 Nuclear Regulatory Commission and other appropriate
7 Federal, State, and local agencies and private entities,
8 shall conduct a study to identify the types of threats that
9 pose an appreciable risk to the security of the various
10 classes of facilities licensed by the Nuclear Regulatory
11 Commission under the Atomic Energy Act of 1954. Such
12 study shall take into account, but not be limited to—

- 13 (1) the events of September 11, 2001;
- 14 (2) an assessment of physical, cyber, bio-
15 chemical, and other terrorist threats;
- 16 (3) the potential for attack on facilities by mul-
17 tiple coordinated teams of a large number of individ-
18 uals;
- 19 (4) the potential for assistance in an attack
20 from several persons employed at the facility;
- 21 (5) the potential for suicide attacks;
- 22 (6) the potential for water-based and air-based
23 threats;
- 24 (7) the potential use of explosive devices of con-
25 siderable size and other modern weaponry;

1 (8) the potential for attacks by persons with a
2 sophisticated knowledge of facility operations;

3 (9) the potential for fires, especially fires of
4 long duration; and

5 (10) the potential for attacks on spent fuel
6 shipments by multiple coordinated teams of a large
7 number of individuals.

8 (b) SUMMARY AND CLASSIFICATION REPORT.—Not
9 later than 180 days after the date of the enactment of
10 this Act, the President shall transmit to the Congress and
11 the Nuclear Regulatory Commission a report—

12 (1) summarizing the types of threats identified
13 under subsection (a); and

14 (2) classifying each type of threat identified
15 under subsection (a), in accordance with existing
16 laws and regulations, as either—

17 (A) involving attacks and destructive acts,
18 including sabotage, directed against the facility
19 by an enemy of the United States, whether a
20 foreign government or other person, or other-
21 wise falling under the responsibilities of the
22 Federal Government; or

23 (B) involving the type of risks that Nu-
24 clear Regulatory Commission licensees should
25 be responsible for guarding against.

1 (c) FEDERAL ACTION REPORT.—Not later than 90
2 days after the date on which a report is transmitted under
3 subsection (b), the President shall transmit to the Con-
4 gress a report on actions taken, or to be taken, to address
5 the types of threats identified under subsection (b)(2)(A).
6 Such report may include a classified annex as appropriate.

7 (d) REGULATIONS.—Not later than 270 days after
8 the date on which a report is transmitted under subsection
9 (b), the Nuclear Regulatory Commission shall issue regu-
10 lations, including changes to the design basis threat, to
11 ensure that licensees address the threats identified under
12 subsection (b)(2)(B).

13 (e) PHYSICAL SECURITY PROGRAM.—The Nuclear
14 Regulatory Commission shall establish an operational
15 safeguards response evaluation program that ensures that
16 the physical protection capability and operational safe-
17 guards response for sensitive nuclear facilities, as deter-
18 mined by the Commission consistent with the protection
19 of public health and the common defense and security,
20 shall be tested periodically through Commission approved
21 or designed, observed, and evaluated force-on-force exer-
22 cises to determine whether the ability to defeat the design
23 basis threat is being maintained. For purposes of this sub-
24 section, the term “sensitive nuclear facilities” includes at
25 a minimum commercial nuclear power plants, including

1 associated spent fuel storage facilities, spent fuel storage
2 pools and dry cask storage at closed reactors, independent
3 spent fuel storage facilities and geologic repository oper-
4 ations areas, category I fuel cycle facilities, and gaseous
5 diffusion plants.

6 (f) CONTROL OF INFORMATION.—In carrying out this
7 section, the President and the Nuclear Regulatory Com-
8 mission shall control the dissemination of restricted data,
9 safeguards information, and other classified national secu-
10 rity information in a manner so as to ensure the common
11 defense and security, consistent with chapter 12 of the
12 Atomic Energy Act of 1954.

13 **SEC. 14013. UNREASONABLE RISK CONSULTATION.**

14 Section 170 of the Atomic Energy Act of 1954 (42
15 U.S.C. 2210) is amended by adding at the end the fol-
16 lowing new subsection:

17 “V. UNREASONABLE RISK CONSULTATION.—(1) Be-
18 fore entering into an agreement of indemnification under
19 this section with respect to a utilization facility, the Nu-
20 clear Regulatory Commission shall consult with the Assist-
21 ant to the President for Homeland Security (or any suc-
22 cessor official) concerning whether the location of the pro-
23 posed facility and the design of that type of facility ensure
24 that the facility provides for adequate protection of public
25 health and safety if subject to a terrorist attack.

1 “(2) Before issuing a license or a license renewal for
2 a sensitive nuclear facility, the Nuclear Regulatory Com-
3 mission shall consult with the Secretary of Homeland Se-
4 curity or his designee concerning the emergency evacu-
5 ation plan for the communities living near the sensitive
6 nuclear facility. For purposes of this paragraph, the term
7 ‘sensitive nuclear facility’ has the meaning given that term
8 in section 14012 of the Energy Policy Act of 2003.”.

9 **SEC. 14014. FINANCIAL ACCOUNTABILITY.**

10 (a) AMENDMENT.—Section 170 of the Atomic En-
11 ergy Act of 1954 (42 U.S.C. 2210) is amended by adding
12 at the end the following new subsection:

13 “w. FINANCIAL ACCOUNTABILITY.—(1) Notwith-
14 standing subsection d., the Attorney General may bring
15 an action in the appropriate United States district court
16 to recover from a contractor of the Secretary (or subcon-
17 tractor or supplier of such contractor) amounts paid by
18 the Federal Government under an agreement of indem-
19 nification under subsection d. for public liability resulting
20 from conduct which constitutes intentional misconduct of
21 any corporate officer, manager, or superintendent of such
22 contractor (or subcontractor or supplier of such con-
23 tractor).

1 “(2) The Attorney General may recover under para-
2 graph (1) an amount not to exceed the amount of the prof-
3 it derived by the defendant from the contract.

4 “(3) No amount recovered from any contractor (or
5 subcontractor or supplier of such contractor) under para-
6 graph (1) may be reimbursed directly or indirectly by the
7 Department of Energy.

8 “(4) Paragraph (1) shall not apply to any nonprofit
9 entity conducting activities under contract for the Sec-
10 retary.

11 “(5) No waiver of a defense required under this sec-
12 tion shall prevent a defendant from asserting such defense
13 in an action brought under this subsection.

14 “(6) The Secretary shall, by rule, define the terms
15 ‘profit’ and ‘nonprofit entity’ for purposes of this sub-
16 section. Such rulemaking shall be completed not later than
17 180 days after the date of the enactment of this sub-
18 section.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall not apply to any agreement of indem-
21 nification entered into under section 170 d. of the Atomic
22 Energy Act of 1954 (42 U.S.C. 2210(d)) before the date
23 of the enactment of this Act.

1 **SEC. 14015. CIVIL PENALTIES.**

2 (a) REPEAL OF AUTOMATIC REMISSION.—Section
3 234A b. (2) of the Atomic Energy Act of 1954 (42 U.S.C.
4 2282a(b)(2)) is amended by striking the last sentence.

5 (b) LIMITATION FOR NONPROFIT INSTITUTIONS.—
6 Subsection d. of section 234A of the Atomic Energy Act
7 of 1954 (42 U.S.C. 2282a(d)) is amended to read as fol-
8 lows:

9 “d. Notwithstanding subsection a., a civil penalty for
10 a violation under subsection a. shall not exceed the amount
11 of any discretionary fee paid under the contract under
12 which such violation occurs for any nonprofit contractor,
13 subcontractor, or supplier—

14 “(1) described in section 501(c)(3) of the Inter-
15 nal Revenue Code of 1986 and exempt from tax
16 under section 501(a) of such Code; or

17 “(2) identified by the Secretary by rule as ap-
18 propriate to be treated the same under this sub-
19 section as an entity described in paragraph (1), con-
20 sistent with the purposes of this section.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall not apply to any violation of the Atomic
23 Energy Act of 1954 occurring under a contract entered
24 into before the date of the enactment of this Act.

25 (d) RULEMAKING.—Not later than 6 months after
26 the date of the enactment of this Act, the Secretary of

1 Energy shall issue a rule for the implementation of the
2 amendment made by subsection (b).

3 **Subtitle B—Miscellaneous Matters**

4 **SEC. 14021. LICENSES.**

5 Section 103 c. of the Atomic Energy Act of 1954 (42
6 U.S.C. 2133(c)) is amended by inserting “from the au-
7 thorization to commence operations” after “forty years”.

8 **SEC. 14022. NUCLEAR REGULATORY COMMISSION MEET-** 9 **INGS.**

10 If a quorum of the Nuclear Regulatory Commission
11 gathers to discuss official Commission business the discus-
12 sions shall be recorded, and the Commission shall notify
13 the public of such discussions within 15 days after they
14 occur. The Commission shall promptly make a transcript
15 of the recording available to the public on request, except
16 to the extent that public disclosure is exempted or prohib-
17 ited by law. This section shall not apply to a meeting,
18 within the meaning of that term under section 552b(a)(2)
19 of title 5, United States Code.

20 **SEC. 14023. NRC TRAINING PROGRAM.**

21 (a) IN GENERAL.—In order to maintain the human
22 resource investment and infrastructure of the United
23 States in the nuclear sciences, health physics, and engi-
24 neering fields, in accordance with the statutory authorities
25 of the Commission relating to the civilian nuclear energy

1 program, the Nuclear Regulatory Commission shall carry
2 out a training and fellowship program to address short-
3 ages of individuals with critical nuclear safety regulatory
4 skills.

5 (b) AUTHORIZATION OF APPROPRIATIONS.—

6 (1) IN GENERAL.—There are authorized to be
7 appropriated to carry out this section \$1,000,000 for
8 each of fiscal years 2004 through 2007.

9 (2) AVAILABILITY.—Funds made available
10 under paragraph (1) shall remain available until ex-
11 pended.

12 **SEC. 14024. COST RECOVERY FROM GOVERNMENT AGEN-**
13 **CIES.**

14 Section 161 w. of the Atomic Energy Act of 1954
15 (42 U.S.C. 2201(w)) is amended—

16 (1) by striking “for or is issued” and all that
17 follows through “1702” and inserting “to the Com-
18 mission for, or is issued by the Commission, a li-
19 cense or certificate”;

20 (2) by striking “483a” and inserting “9701”;
21 and

22 (3) by striking “, of applicants for, or holders
23 of, such licenses or certificates”.

1 **SEC. 14025. ELIMINATION OF PENSION OFFSET.**

2 Section 161 of the Atomic Energy Act of 1954 (42
3 U.S.C. 2201) is amended by adding at the end the fol-
4 lowing:

5 “y. exempt from the application of sections
6 8344 and 8468 of title 5, United States Code, an
7 annuitant who was formerly an employee of the
8 Commission who is hired by the Commission as a
9 consultant, if the Commission finds that the annu-
10 itant has a skill that is critical to the performance
11 of the duties of the Commission.”.

12 **SEC. 14026. CARRYING OF FIREARMS BY LICENSEE EM-**
13 **PLOYEES.**

14 Section 161 k. of the Atomic Energy Act of 1954 (42
15 U.S.C. 2201(k)) is amended to read as follows:

16 “k. authorize such of its members, officers, and
17 employees as it deems necessary in the interest of
18 the common defense and security to carry firearms
19 while in the discharge of their official duties. The
20 Commission may also authorize—

21 “(1) such of those employees of its con-
22 tractors and subcontractors (at any tier) en-
23 gaged in the protection of property under the
24 jurisdiction of the United States located at fa-
25 cilities owned by or contracted to the United
26 States or being transported to or from such fa-

1 ilities as it deems necessary in the interests of
2 the common defense and security; and

3 “(2) such of those employees of persons li-
4 censed or certified by the Commission (includ-
5 ing employees of contractors of licensees or cer-
6 tificate holders) engaged in the protection of
7 property of (A) facilities owned or operated by
8 a Commission licensee or certificate holder that
9 are designated by the Commission, or (B) prop-
10 erty of significance to the common defense and
11 security located at facilities owned or operated
12 by a Commission licensee or certificate holder
13 or being transported to or from such facilities;
14 to carry firearms while in the discharge of their offi-
15 cial duties. A person authorized to carry firearms
16 under this subsection may, while in the performance
17 of, and in connection with, official duties, make ar-
18 rests without warrant for any offense against the
19 United States committed in that person’s presence
20 or for any felony cognizable under the laws of the
21 United States if that person has reasonable grounds
22 to believe that the individual to be arrested has com-
23 mitted or is committing such felony. An employee of
24 a contractor or subcontractor or of a Commission li-
25 censee or certificate holder (or a contractor of a li-

1 censee or certificate holder) authorized to carry fire-
2 arms under this subsection may make such arrests
3 only when the individual to be arrested is within, or
4 in direct flight from, the area of such offense. A per-
5 son granted authority to make arrests by this sub-
6 section may exercise that authority only in the en-
7 forcement of laws regarding the property of the
8 United States in the custody of the Department of
9 Energy, the Nuclear Regulatory Commission, or a
10 contractor of the Department of Energy or Nuclear
11 Regulatory Commission or of a licensee or certificate
12 holder of the Commission, laws applicable to facili-
13 ties owned or operated by a Commission licensee or
14 certificate holder that are designated by the Com-
15 mission pursuant to this subsection and property of
16 significance to the common defense and security that
17 is in the custody of a licensee or certificate holder
18 or a contractor of a licensee or certificate holder of
19 the Commission, or any provision of this Act that
20 may subject an offender to a fine, imprisonment, or
21 both. The arrest authority conferred by this sub-
22 section is in addition to any arrest authority under
23 other laws. The Secretary and the Commission, with
24 the approval of the Attorney General, shall issue
25 guidelines to implement this subsection;”.

1 **SEC. 14027. UNAUTHORIZED INTRODUCTION OF DAN-**
2 **GEROUS WEAPONS.**

3 Section 229 a. of the Atomic Energy Act of 1954 (42
4 U.S.C. 2278a(a)) is amended by adding after “custody of
5 the Commission” the following: “or subject to its licensing
6 authority or to certification by the Commission under this
7 Act or any other Act”.

8 **SEC. 14028. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.**

9 Section 236 a. of the Atomic Energy Act of 1954 (42
10 U.S.C. 2284(a)) is amended to read as follows:

11 “a. Any person who intentionally and willfully de-
12 stroys or causes physical damage to, or who intentionally
13 and willfully attempts to destroy or cause physical damage
14 to—

15 “(1) any production facility or utilization facil-
16 ity licensed under this Act;

17 “(2) any nuclear waste storage, treatment, or
18 disposal facility licensed under this Act;

19 “(3) any nuclear fuel for a utilization facility li-
20 censed under this Act or any spent nuclear fuel from
21 such a facility;

22 “(4) any uranium enrichment or nuclear fuel
23 fabrication facility licensed or certified by the Nu-
24 clear Regulatory Commission; or

25 “(5) any production, utilization, waste storage,
26 waste treatment, waste disposal, uranium enrich-

1 ment, or nuclear fuel fabrication facility subject to
2 licensing or certification under this Act during its
3 construction where the destruction or damage
4 caused or attempted to be caused could affect public
5 health and safety during the operation of the facil-
6 ity,

7 shall be fined not more than \$1,000,000 or imprisoned
8 for up to life in prison without parole, or both.”.

9 **SEC. 14029. COOPERATIVE RESEARCH AND DEVELOPMENT**
10 **AND SPECIAL DEMONSTRATION PROJECTS**
11 **FOR THE URANIUM MINING INDUSTRY.**

12 (a) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Secretary of En-
14 ergy \$10,000,000 for each of fiscal years 2004, 2005, and
15 2006 for—

16 (1) cooperative, cost-shared agreements between
17 the Department of Energy and domestic uranium
18 producers to identify, test, and develop improved in
19 situ leaching mining technologies, including low-cost
20 environmental restoration technologies that may be
21 applied to sites after completion of in situ leaching
22 operations; and

23 (2) funding for competitively selected dem-
24 onstration projects with domestic uranium producers
25 relating to—

- 1 (A) enhanced production with minimal en-
2 vironmental impacts;
3 (B) restoration of well fields; and
4 (C) decommissioning and decontamination
5 activities.

6 (b) DOMESTIC URANIUM PRODUCER.—For purposes
7 of this section, the term “domestic uranium producer” has
8 the meaning given that term in section 1018(4) of the En-
9 ergy Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except
10 that the term shall not include any producer that has not
11 produced uranium from domestic reserves on or after July
12 30, 1998, in Colorado, Nebraska, Texas, Utah, or Wyo-
13 ming.

14 **SEC. 14030. URANIUM SALES.**

15 (a) RESTRICTIONS ON INVENTORY SALES.—Section
16 3112(d) of the USEC Privatization Act (42 U.S.C.
17 2297h–10(d)) is amended to read as follows:

18 “(d) INVENTORY SALES.—(1) In addition to the
19 transfers and sales authorized under subsections (b), (c),
20 and (e), the Secretary of Energy or the Secretary of the
21 Army may transfer or sell uranium subject to paragraph
22 (2).

23 “(2) Except as provided in subsections (b), (c), and
24 (e), no sale or transfer of uranium shall be made under

1 this subsection by the Secretary of Energy or the Sec-
2 retary of the Army unless—

3 “(A) the President determines that the material
4 is not necessary for national security needs;

5 “(B) the price paid to the appropriate Sec-
6 retary, if the transaction is a sale, will not be less
7 than the fair market value of the material; and

8 “(C) the sale or transfer to end users is made
9 pursuant to a contract of at least 3 years duration.

10 “(3) The Secretary of Energy shall not make any
11 transfer or sale of uranium under this subsection that
12 would cause the total amount of uranium transferred or
13 sold pursuant to this subsection that is delivered for con-
14 sumption by end users to exceed—

15 “(A) 3 million pounds of U_3O_8 equivalent in fis-
16 cal year 2004, 2005, 2006, 2007, 2008, or 2009;

17 “(B) 5 million pounds of U_3O_8 equivalent in
18 fiscal year 2010 or 2011;

19 “(C) 7 million pounds of U_3O_8 equivalent in fis-
20 cal year 2012; and

21 “(D) 10 million pounds of U_3O_8 equivalent in
22 fiscal year 2013 or any fiscal year thereafter.

23 “(4) For the purposes of this subsection, the recovery
24 of uranium from uranium bearing materials transferred
25 or sold by the Secretary of Energy or the Secretary of

1 the Army to the domestic uranium industry shall be the
2 preferred method of making uranium available. The recov-
3 ered uranium shall be counted against the annual max-
4 imum deliveries set for in this section, when such uranium
5 is sold to end users.”.

6 (b) TRANSFERS TO CORPORATION.—Section 3112 of
7 the USEC Privatization Act (42 U.S.C. 2297h–10) is fur-
8 ther amended by adding at the end the following new sub-
9 section:

10 “(g) TRANSFERS TO CORPORATION.—Notwith-
11 standing subsection (b)(2) and subsection (d)(2), the Sec-
12 retary may transfer up to 9,550 metric tons of uranium
13 to the Corporation to replace uranium that the Secretary
14 transferred to the Corporation on or about June 30, 1993,
15 April 20, 1998, and May 18, 1998, and that does not meet
16 commercial specifications.”.

17 (c) SERVICES.—Section 3112 of the USEC Privatiza-
18 tion Act (42 U.S.C. 2297h–10) is further amended by
19 adding at the end the following new subsection:

20 “(h) SERVICES.—(1) Notwithstanding any other pro-
21 vision of this section, if the Secretary determines that if
22 the Corporation has failed, or may fail, to perform any
23 obligation under the Agreement between the Department
24 of Energy and the Corporation dated June 17, 2002, and
25 as amended thereafter, which failure could result in termi-

1 nation of the Agreement, the Secretary shall notify the
2 Committee on Energy and Commerce of the House of
3 Representatives and the Committee on Energy and Nat-
4 ural Resources of the Senate, in such a manner that af-
5 fords the Committees an opportunity to comment, prior
6 to a determination by the Secretary whether termination,
7 waiver, or modification of the Agreement is required. The
8 Secretary is authorized to take such action as he deter-
9 mines necessary under the Agreement to terminate, waive,
10 or modify provisions of the Agreement to achieve its pur-
11 poses.

12 “(2) Notwithstanding any other provision of this sec-
13 tion, if the Secretary determines in accordance with Arti-
14 cle 2D of the Agreement between the Department of En-
15 ergy and the Corporation dated June 17, 2002, and as
16 amended thereafter, to transition operation of the Padu-
17 cah gaseous diffusion plant, the Secretary may provide
18 uranium enrichment services in a manner consistent with
19 Article 2D of such Agreement.”.

20 (d) REPORT.—Within 3 years after the date of enact-
21 ment of this Act, the Secretary shall report to the Con-
22 gress on the implementation of this section. The report
23 shall include a discussion of available excess uranium in-
24 ventories, all sales or transfers made by the Secretary of
25 Energy or the Secretary of the Army, the impact of such

1 sales or transfers on the domestic uranium industry, the
2 spot market uranium price, and the national security in-
3 terests of the United States, and any steps taken to reme-
4 diate any adverse impacts of such sales or transfers.

5 **SEC. 14031. MEDICAL ISOTOPE PRODUCTION.**

6 Section 134 of the Atomic Energy Act of 1954 (42
7 U.S.C. 2160d) is amended—

8 (1) by redesignating subsection b. as subsection
9 f.;

10 (2) by inserting after subsection a. the fol-
11 lowing:

12 “b. The Commission may issue a license authorizing
13 the export (including shipment to and use at intermediate
14 and ultimate consignees specified in the license) to a Re-
15 cipient Country of highly enriched uranium for medical
16 isotope production if, in addition to any other require-
17 ments of this Act, the Commission determines that—

18 “(1) a Recipient Country that supplies an as-
19 surance letter to the United States Government in
20 connection with the Commission’s consideration of
21 the export license application has informed the
22 United States Government that any intermediate
23 consignees and the ultimate consignee specified in
24 the application are required to use such highly en-

1 riched uranium solely to produce medical isotopes;
2 and

3 “(2) the highly enriched uranium for medical
4 isotope production will be irradiated only in a reac-
5 tor in a Recipient Country that—

6 “(A) uses an alternative nuclear reactor
7 fuel; or

8 “(B) is the subject of an agreement with
9 the United States Government to convert to an
10 alternative nuclear reactor fuel when such fuel
11 can be used in that reactor.

12 “c. Applications to the Commission for licenses au-
13 thorizing the export to a Recipient Country of highly en-
14 riched uranium for medical isotope production shall be
15 subject to subsection b., and subsection a. shall not be ap-
16 plicable to such exports.

17 “d. The Commission is authorized to specify, by rule-
18 making or decision in connection with an export license
19 application, that a country other than a Recipient Country
20 may receive exports of highly enriched uranium for med-
21 ical isotope production in accordance with the same cri-
22 teria established by subsection b. for exports to a Reci-
23 ent Country, upon the Commission’s finding that such ad-
24 ditional country is a party to the Treaty on the Non-
25 proliferation of Nuclear Weapons and the Convention on

1 the Physical Protection of Nuclear Material and will re-
2 ceive such highly enriched uranium pursuant to an agree-
3 ment with the United States concerning peaceful uses of
4 nuclear energy.

5 “e. The Commission shall review the adequacy of
6 physical protection requirements that are currently appli-
7 cable to the transportation of highly enriched uranium for
8 medical isotope production. If it determines that addi-
9 tional physical protection measures are necessary, includ-
10 ing any limits that the Commission finds are necessary
11 on the quantity of highly enriched uranium contained in
12 a single shipment for medical isotope production, the Com-
13 mission shall impose such requirements, as license condi-
14 tions or through other appropriate means.”; and

15 (3) in subsection f., as so redesignated by para-
16 graph (1) of this section—

17 (A) by striking “and” at the end of para-
18 graph (2);

19 (B) by striking the period at the end of
20 paragraph (3)(B) and inserting a semicolon;
21 and

22 (C) by adding at the end the following:

23 “(4) the term ‘medical isotopes’ means radio-
24 active isotopes, including Molybdenum 99, Iodine
25 131, and Xenon 133, that are used to produce radio-

1 pharmaceuticals for diagnostic or therapeutic proce-
2 dures on patients, or in connection with research
3 and development of radiopharmaceuticals;

4 “(5) the term ‘highly enriched uranium for
5 medical isotope production’ means highly enriched
6 uranium contained in, or for use in, targets to be ir-
7 radiated for the sole purpose of producing medical
8 isotopes; –

9 “(6) the term ‘radiopharmaceuticals’ means ra-
10 dioactive isotopes containing byproduct material
11 combined with chemical or biological material that
12 are designed to accumulate temporarily in a part of
13 the body, for therapeutic purposes or for enabling
14 the production of a useful image of the appropriate
15 body organ or function for use in diagnosis of med-
16 ical conditions; and

17 “(7) the term ‘Recipient Country’ means Can-
18 ada, Belgium, France, Germany, and the Nether-
19 lands.”.

20 **SEC. 14032. HIGHLY ENRICHED URANIUM DIVERSION**
21 **THREAT REPORT.**

22 Section 307 of the Energy Reorganization Act of
23 1974 (42 U.S.C. 5877) is amended by adding at the end
24 the following new subsection:

1 “(d) Not later than 6 months after the date of the
2 enactment of this Act, the Secretary of Energy shall trans-
3 mit to the Congress a report with recommendations on re-
4 ducing the threat resulting from the theft or diversion of
5 highly enriched uranium. Such report shall address—

6 “(1) monitoring of highly enriched uranium
7 supplies at any commercial companies who have ac-
8 cess to substantial amounts of highly enriched ura-
9 nium;

10 “(2) assistance to companies described in para-
11 graph (1) with security and personnel checks;

12 “(3) acceleration of the process of blending
13 down excess highly enriched uranium into low-en-
14 riched uranium;

15 “(4) purchasing highly enriched uranium (ex-
16 cept for production of medical isotopes);

17 “(5) paying the cost of shipping highly enriched
18 uranium;

19 “(6) accelerating the conversion of commercial
20 research reactors and energy reactors to the use of
21 low-enriched uranium fuel where they now use high-
22 ly enriched uranium fuel;

23 “(7) minimizing, and encouraging transparency
24 in, the further enrichment of low-enriched uranium
25 to highly enriched uranium; and

1 “(8) accelerating the purchase of excess weap-
2 ons grade plutonium and uranium from Russia to
3 reduce the likelihood that such plutonium and ura-
4 nium could be stolen or sold to terrorists.”.

5 **SEC. 14033. WHISTLEBLOWER PROTECTION.**

6 (a) DEFINITION OF EMPLOYER.—Section 211(a)(2)
7 of the Energy Reorganization Act of 1974 (42 U.S.C.
8 5851(a)(2)) is amended—

9 (1) by striking “and” at the end of subpara-
10 graph (C);

11 (2) in subparagraph (D), by striking “that is
12 indemnified” and all that follows through “12344.”
13 and inserting “or the Commission; and”; and

14 (3) by adding at the end the following new sub-
15 paragraph:

16 “(E) the Department of Energy and the Com-
17 mission.”.

18 (b) DE NOVO REVIEW.—Subsection (b) of such sec-
19 tion 211 is amended by adding at the end the following
20 new paragraph:

21 “(4) If the Secretary has not issued a final decision
22 within 180 days after the filing of a complaint under para-
23 graph (1), and there is no showing that such delay is due
24 to the bad faith of the claimant, the claimant may bring
25 an action at law or equity for de novo review in the appro-

1 piate district court of the United States, which shall have
2 jurisdiction over such an action without regard to the
3 amount in controversy.”.

4 **SEC. 14034. PREVENTING THE MISUSE OF NUCLEAR MATE-**
5 **RIALS AND TECHNOLOGY.**

6 (a) AMENDMENT.—Chapter 14 of the Atomic Energy
7 Act of 1954 (42 U.S.C. 2201 et seq.) is amended by add-
8 ing at the end the following new section:

9 “SEC. 170D. PREVENTING THE MISUSE OF NU-
10 CLEAR MATERIALS AND TECHNOLOGY.—

11 “a. In order to successfully promote the development
12 of nuclear energy as a safe and reliable source of electrical
13 energy, it is the policy of the United States to prevent
14 any nuclear materials, technology, components, sub-
15 stances, technical information, or related goods or services
16 from being misused or diverted from peaceful nuclear en-
17 ergy purposes.

18 “b. In order to further advance the policy set forth
19 in subsection a., notwithstanding any other provision of
20 law, no Federal agency shall issue any license, approval,
21 or authorization for the export or reexport, or the transfer
22 or retransfer, either directly or indirectly, to any country
23 whose government has been identified by the Secretary of
24 State as engaged in state sponsorship of terrorist activities
25 (specifically including any country the government of

1 which, as of September 11, 2001, had been determined
 2 by the Secretary of State under section 620A(a) of the
 3 Foreign Assistance Act of 1961, section 6(j)(1) of the Ex-
 4 port Administration Act of 1979, or section 40(d) of the
 5 Arms Export Control Act to have repeatedly provided sup-
 6 port for acts of international terrorism) of—

7 “(1) any special nuclear material or byproduct
 8 material;

9 “(2) any nuclear production or utilization facili-
 10 ties; or

11 “(3) any components, technologies, substances,
 12 technical information, or related goods or services
 13 used (or which could be used) in a nuclear produc-
 14 tion or utilization facility.

15 “c. Any license, approval, or authorization described
 16 in subsection b. made prior to the date of enactment of
 17 this section is hereby revoked.”.

18 (b) TABLE OF CONTENTS AMENDMENT.—The table
 19 of contents of such chapter 14 is amended by adding at
 20 the end the following item:

“Sec. 170D. Preventing the misuse of nuclear materials and technology.”.

21 **SEC. 14035. LIMITATION ON LEGAL FEE REIMBURSEMENT.**

22 The Department of Energy shall not, except as re-
 23 quired under a contract entered into before the date of
 24 enactment of this Act, reimburse any contractor or sub-
 25 contractor of the Department for any legal fees or ex-

1 penses incurred with respect to a complaint subsequent
2 to—

3 (1) an adverse determination on the merits with
4 respect to such complaint against the contractor or
5 subcontractor by the Director of the Department of
6 Energy’s Office of Hearings and Appeals pursuant
7 to section 708 of title 10, Code of Federal Regula-
8 tions, or by a Department of Labor Administrative
9 Law Judge pursuant to section 211 of the Energy
10 Reorganization Act of 1974 (42 U.S.C. 5851); or

11 (2) an adverse final judgment by any State or
12 Federal court with respect to such complaint against
13 the contractor or subcontractor for wrongful termi-
14 nation or retaliation due to the making of disclo-
15 sures protected under chapter 12 of title 5, United
16 States Code, section 211 of the Energy Reorganiza-
17 tion Act of 1974 (42 U.S.C. 5851), or any com-
18 parable State law,

19 unless the adverse determination or final judgment is re-
20 versed upon further administrative or judicial review.

21 **SEC. 14036. TRANSFER.**

22 Not later than December 31, 2003, the Secretary of
23 Energy shall transmit to the Congress a plan for the
24 transfer to the Secretary of title to, and full responsibility
25 for the possession, transportation, disposal, stewardship,

1 maintenance, and monitoring of, all facilities, property,
2 and radioactive waste at the Western New York Service
3 Center in West Valley, New York. The Secretary shall con-
4 sult with the President of the New York State Energy Re-
5 search and Development Authority in developing such
6 plan.

7 **SEC. 14037. STUDY TO DETERMINE FEASIBILITY OF DEVEL-**
8 **OPING COMMERCIAL NUCLEAR ENERGY PRO-**
9 **DUCTION FACILITIES AT EXISTING DEPART-**
10 **MENT OF ENERGY SITES.**

11 (a) IN GENERAL.—The Secretary of Energy shall
12 conduct a study to determine the feasibility of developing
13 commercial nuclear energy production facilities at Depart-
14 ment of Energy sites in existence on the date of the enact-
15 ment of this Act, including—

16 (1) options for how and where nuclear power
17 plants can be developed on existing Department of
18 Energy sites;

19 (2) estimates on cost savings to the Federal
20 Government that may be realized by locating new
21 nuclear power plants on Federal sites;

22 (3) the feasibility of incorporating new tech-
23 nology into nuclear power plants located on Federal
24 sites;

1 (4) potential improvements in the licensing and
 2 safety oversight procedures of nuclear power plants
 3 located on Federal sites;

4 (5) an assessment of the effects of nuclear
 5 waste management policies and projects as a result
 6 of locating nuclear power plants located on Federal
 7 sites; and

8 (6) any other factors that the Secretary believes
 9 would be relevant in making the determination.

10 (b) REPORT.—Not later than 90 days after the date
 11 of the enactment of this Act, the Secretary shall submit
 12 to Congress a report describing the results of the study
 13 under subsection (a).

14 **TITLE V—VEHICLES AND FUELS**
 15 **Subtitle A—Energy Policy Act**
 16 **Amendments**

17 **SEC. 15011. CREDIT FOR SUBSTANTIAL CONTRIBUTION TO-**
 18 **WARD NONCOVERED FLEETS.**

19 Section 508 of the Energy Policy Act of 1992 (42
 20 U.S.C. 13258) is amended by adding at the end the fol-
 21 lowing new subsection:

22 “(e) CREDIT FOR SUBSTANTIAL CONTRIBUTION TO-
 23 WARD USE OF DEDICATED VEHICLES IN NONCOVERED
 24 FLEETS.—

25 “(1) DEFINITIONS.—In this subsection:

1 “(A) MEDIUM OR HEAVY DUTY VEHI-
2 CLE.—The term ‘medium or heavy duty vehicle’
3 means a dedicated vehicle that—

4 “(i) in the case of a medium duty ve-
5 hicle, has a gross vehicle weight rating of
6 more than 8,500 pounds but not more
7 than 14,000 pounds; or

8 “(ii) in the case of a heavy duty vehi-
9 cle, has a gross vehicle weight rating of
10 more than 14,000 pounds.

11 “(B) SUBSTANTIAL CONTRIBUTION.—The
12 term ‘substantial contribution’ means not less
13 than \$15,000 in cash or in kind services, as de-
14 termined by the Secretary.

15 “(2) ALLOCATION OF CREDITS.—The Secretary
16 shall allocate a credit to a fleet or covered person
17 under this section if the fleet or person makes a sub-
18 stantial contribution toward the acquisition and use
19 of dedicated vehicles or neighborhood electric vehi-
20 cles by a person that owns, operates, leases, or oth-
21 erwise controls a fleet that is not covered by this
22 title.

23 “(3) MULTIPLE CREDITS FOR MEDIUM AND
24 HEAVY DUTY VEHICLES.—The Secretary shall issue
25 2 full credits to a fleet or covered person under this

1 section if the fleet or person makes a substantial
2 contribution toward the acquisition and use of a me-
3 dium or heavy duty vehicle.

4 “(4) USE OF CREDITS.—At the request of a
5 fleet or covered person allocated a credit under this
6 subsection, the Secretary shall, for the year in which
7 the acquisition of the dedicated vehicle or neighbor-
8 hood electric vehicle is made, treat that credit as the
9 acquisition of 1 alternative fueled vehicle that the
10 fleet or covered person is required to acquire under
11 this title.

12 “(5) LIMITATION.—Except as provided in para-
13 graph (3), no more than 1 credit shall be allocated
14 under this subsection for each vehicle.”.

15 **SEC. 15012. CREDIT FOR ALTERNATIVE FUEL INFRASTRUC-**
16 **TURE.**

17 Section 508 of the Energy Policy Act of 1992 (42
18 U.S.C. 13258), as amended by this division, is further
19 amended by adding at the end the following new sub-
20 section:

21 “(f) CREDIT FOR INVESTMENT IN ALTERNATIVE
22 FUEL INFRASTRUCTURE.—

23 “(1) DEFINITION.—In this subsection, the term
24 ‘qualifying infrastructure’ means—

1 “(A) equipment required to refuel or re-
2 charge alternative fueled vehicles;

3 “(B) facilities or equipment required to
4 maintain, repair, or operate alternative fueled
5 vehicles;

6 “(C) training programs, educational mate-
7 rials, or other activities necessary to provide in-
8 formation regarding the operation, mainte-
9 nance, or benefits associated with alternative
10 fueled vehicles; and

11 “(D) such other activities the Secretary
12 considers to constitute an appropriate expendi-
13 ture in support of the operation, maintenance,
14 or further widespread adoption of or utilization
15 of alternative fueled vehicles.

16 “(2) ALLOCATION OF CREDITS.—The Secretary
17 shall allocate a credit to a fleet or covered person
18 under this section for investment in qualifying infra-
19 structure if the qualifying infrastructure is open to
20 the general public during regular business hours.

21 “(3) AMOUNT.—For the purposes of credits
22 under this subsection—

23 “(A) 1 credit shall be equal to a minimum
24 investment of \$25,000 in cash or in kind serv-
25 ices, as determined by the Secretary; and

1 “(B) except in the case of a Federal or
2 State fleet, no part of the investment may be
3 provided by Federal or State funds.

4 “(4) USE OF CREDITS.—At the request of a
5 fleet or covered person allocated a credit under this
6 subsection, the Secretary shall, for the year in which
7 the investment is made, treat that credit as the ac-
8 quisition of 1 alternative fueled vehicle that the fleet
9 or covered person is required to acquire under this
10 title.”.

11 **SEC. 15013. ALTERNATIVE FUELED VEHICLE REPORT.**

12 (a) DEFINITIONS.—In this section:

13 (1) ALTERNATIVE FUEL.—The term “alter-
14 native fuel” has the meaning given the term in sec-
15 tion 301 of the Energy Policy Act of 1992 (42
16 U.S.C. 13211).

17 (2) ALTERNATIVE FUELED VEHICLE.—The
18 term “alternative fueled vehicle” has the meaning
19 given the term in section 301 of the Energy Policy
20 Act of 1992 (42 U.S.C. 13211).

21 (3) LIGHT DUTY MOTOR VEHICLE.—The term
22 “light duty motor vehicle” has the meaning given
23 the term in section 301 of the Energy Policy Act of
24 1992 (42 U.S.C. 13211).

1 (4) SECRETARY.—The term “Secretary” means
2 the Secretary of Energy.

3 (b) REPORT.—Not later than 1 year after the date
4 of enactment of this Act, the Secretary shall submit to
5 Congress a report on the effect that titles III, IV, and
6 V of the Energy Policy Act of 1992 have had on the devel-
7 opment of alternative fueled vehicle technology, the avail-
8 ability of alternative fueled vehicles in the market, the cost
9 of light duty motor vehicles that are alternative fueled ve-
10 hicles, and the availability, cost, and use of alternative
11 fuels and biodiesel. Such report shall include any rec-
12 ommendations of the Secretary for legislation concerning
13 the alternative fueled vehicle requirements under the En-
14 ergy Policy Act of 1992, and shall examine, discuss, and
15 determine the following:

16 (1) The number of alternative fueled vehicles
17 acquired by fleets or covered persons required to ac-
18 quire alternative fueled vehicles.

19 (2) The extent to which fleets subject to alter-
20 native fueled vehicle acquisition requirements have
21 met those requirements through the use of fuel mix-
22 tures that contain at least 20 percent biodiesel pur-
23 suant to section 312 of the Energy Policy Act of
24 1992 (42 U.S.C. 13220).

1 (3) The amount of alternative fuel used in al-
2 ternative fueled vehicles acquired by fleets required
3 to acquire alternative fueled vehicles under the En-
4 ergy Policy Act of 1992.

5 (4) The amount of petroleum displaced by the
6 use of alternative fueled vehicles acquired by fleets
7 or covered persons.

8 (5) The cost of compliance with vehicle acquisi-
9 tion requirements under the Energy Policy Act of
10 1992, and the benefits of using such fuel and vehi-
11 cles.

12 (6) Projections of the amount of biodiesel, the
13 number of alternative fueled vehicles, and the
14 amount of alternative fuel that will be used over the
15 next decade by fleets required to acquire alternative
16 fueled vehicles under the Energy Policy Act of 1992.

17 (7) The existence of any obstacles to increased
18 use of alternative fuel and biodiesel in vehicles ac-
19 quired or maintained by fleets required to acquire al-
20 ternative fueled vehicles under the Energy Policy
21 Act of 1992, and the benefits of using such fuel and
22 vehicles.

1 **SEC. 15014. ALLOCATION OF INCREMENTAL COSTS.**

2 Section 303(c) of the Energy Policy Act of 1992 (42
3 U.S.C. 13212(c)) is amended by striking “may” and in-
4 serting “shall”.

5 **Subtitle B—Advanced Vehicles**

6 **SEC. 15021. DEFINITIONS.**

7 For the purposes of this subtitle, the following defini-
8 tions apply:

9 (1) **ALTERNATIVE FUELED VEHICLE.**—The
10 term “alternative fueled vehicle” means a vehicle
11 propelled solely on an alternative fuel as defined in
12 section 301 of the Energy Policy Act of 1992 (42
13 U.S.C. 13211), except the term does not include any
14 vehicle that the Secretary determines, by rule, does
15 not yield substantial environmental benefits over a
16 vehicle operating solely on gasoline or diesel derived
17 from fossil fuels.

18 (2) **FUEL CELL VEHICLE.**—The term “fuel cell
19 vehicle” means a vehicle propelled by an electric
20 motor powered by a fuel cell system that converts
21 chemical energy into electricity by combining oxygen
22 (from air) with hydrogen fuel that is stored on the
23 vehicle or is produced onboard by reformation of a
24 hydrocarbon fuel. Such fuel cell system may or may
25 not include the use of auxiliary energy storage sys-
26 tems to enhance vehicle performance.

1 (3) HYBRID VEHICLE.—The term “hybrid vehi-
2 cle” means a medium or heavy duty vehicle propelled
3 by an internal combustion engine or heat engine
4 using any combustible fuel and an onboard recharge-
5 able energy storage device.

6 (4) NEIGHBORHOOD ELECTRIC VEHICLE.—The
7 term “neighborhood electric vehicle” means a motor
8 vehicle capable of traveling at speeds of 25 miles per
9 hour that is—

10 (A) a low-speed vehicle, as such term is de-
11 fined in section 571.3(b) of title 49, Code of
12 Federal Regulations;

13 (B) a zero-emission vehicle, as such term is
14 defined in section 86.1702–99 of title 40, Code
15 of Federal Regulations; and

16 (C) otherwise lawful to use on local streets.

17 (5) PILOT PROGRAM.—The term “pilot pro-
18 gram” means the competitive grant program estab-
19 lished under section 15022.

20 (6) ULTRA-LOW SULFUR DIESEL VEHICLE.—
21 The term “ultra-low sulfur diesel vehicle” means a
22 vehicle manufactured in model years 2002 through
23 2006 powered by a heavy-duty diesel engine that—

1 (A) is fueled by diesel fuel which contains
2 sulfur at not more than 15 parts per million;
3 and

4 (B) emits not more than the lesser of—

5 (i) for vehicles manufactured in—

6 (I) model years 2002 and 2003,
7 3.0 grams per brake horsepower-hour
8 of oxides of nitrogen and .01 grams
9 per brake horsepower-hour of particu-
10 late matter; and

11 (II) model years 2004 through
12 2006, 2.5 grams per brake horse-
13 power-hour of nonmethane hydro-
14 carbons and oxides of nitrogen and
15 .01 grams per brake horsepower-hour
16 of particulate matter; or

17 (ii) the emissions of nonmethane hy-
18 drocarbons, oxides of nitrogen, and partic-
19 ulate matter of the best performing tech-
20 nology of ultra-low sulfur diesel vehicles of
21 the same class and application that are
22 commercially available.

23 **SEC. 15022. PILOT PROGRAM.**

24 (a) ESTABLISHMENT.—The Secretary shall establish
25 a competitive grant pilot program, to be administered

1 through the Clean Cities Program of the Department of
2 Energy, to provide not more than 10 geographically dis-
3 persed project grants to State governments, local govern-
4 ments, or metropolitan transportation authorities to carry
5 out a project or projects for the purposes described in sub-
6 section (b).

7 (b) GRANT PURPOSES.—Grants under this section
8 may be used for the following purposes:

9 (1) The acquisition of alternative fueled vehicles
10 or fuel cell vehicles, including—

11 (A) passenger vehicles including neighbor-
12 hood electric vehicles; and

13 (B) motorized two-wheel bicycles, scooters,
14 or other vehicles for use by law enforcement
15 personnel or other State or local government or
16 metropolitan transportation authority employ-
17 ees.

18 (2) The acquisition of alternative fueled vehi-
19 cles, hybrid vehicles, or fuel cell vehicles, including—

20 (A) buses used for public transportation or
21 transportation to and from schools;

22 (B) delivery vehicles for goods or services;
23 and

1 (C) ground support vehicles at public air-
2 ports, including vehicles to carry baggage or
3 push airplanes away from terminal gates.

4 (3) The acquisition of ultra-low sulfur diesel ve-
5 hicles.

6 (4) Infrastructure necessary to directly support
7 an alternative fueled vehicle, fuel cell vehicle, or hy-
8 brid vehicle project funded by the grant, including
9 fueling and other support equipment.

10 (5) Operation and maintenance of vehicles, in-
11 frastructure, and equipment acquired as part of a
12 project funded by the grant.

13 (c) APPLICATIONS.—

14 (1) REQUIREMENTS.—The Secretary shall issue
15 requirements for applying for grants under the pilot
16 program. At a minimum, the Secretary shall require
17 that applications be submitted by the head of a
18 State or local government or a metropolitan trans-
19 portation authority, or any combination thereof, and
20 a registered participant in the Clean Cities Program
21 of the Department of Energy, and shall include—

22 (A) a description of the projects proposed
23 in the application, including how they meet the
24 requirements of this subtitle;

1 (B) an estimate of the ridership or degree
2 of use of the projects proposed in the applica-
3 tion;

4 (C) an estimate of the air pollution emis-
5 sions reduced and fossil fuel displaced as a re-
6 sult of the projects proposed in the application,
7 and a plan to collect and disseminate environ-
8 mental data, related to the projects to be fund-
9 ed under the grant, over the life of the projects;

10 (D) a description of how the projects pro-
11 posed in the application will be sustainable
12 without Federal assistance after the completion
13 of the term of the grant;

14 (E) a complete description of the costs of
15 each project proposed in the application, includ-
16 ing acquisition, construction, operation, and
17 maintenance costs over the expected life of the
18 project;

19 (F) a description of which costs of the
20 projects proposed in the application will be sup-
21 ported by Federal assistance under this subtitle;
22 and

23 (G) documentation to the satisfaction of
24 the Secretary that diesel fuel containing sulfur
25 at not more than 15 parts per million is avail-

1 able for carrying out the projects, and a com-
2 mitment by the applicant to use such fuel in
3 carrying out the projects.

4 (2) PARTNERS.—An applicant under paragraph
5 (1) may carry out projects under the pilot program
6 in partnership with public and private entities.

7 (d) SELECTION CRITERIA.—In evaluating applica-
8 tions under the pilot program, the Secretary shall consider
9 each applicant’s previous experience with similar projects
10 and shall give priority consideration to applications that—

11 (1) are most likely to maximize protection of
12 the environment;

13 (2) demonstrate the greatest commitment on
14 the part of the applicant to ensure funding for the
15 proposed projects and the greatest likelihood that
16 each project proposed in the application will be
17 maintained or expanded after Federal assistance
18 under this subtitle is completed; and

19 (3) exceed the minimum requirements of sub-
20 section (c)(1)(A).

21 (e) PILOT PROJECT REQUIREMENTS.—

22 (1) MAXIMUM AMOUNT.—The Secretary shall
23 not provide more than \$20,000,000 in Federal as-
24 sistance under the pilot program to any applicant.

1 (2) COST SHARING.—The Secretary shall not
2 provide more than 50 percent of the cost, incurred
3 during the period of the grant, of any project under
4 the pilot program.

5 (3) MAXIMUM PERIOD OF GRANTS.—The Sec-
6 retary shall not fund any applicant under the pilot
7 program for more than 5 years.

8 (4) DEPLOYMENT AND DISTRIBUTION.—The
9 Secretary shall seek to the maximum extent prac-
10 ticable to ensure a broad geographic distribution of
11 project sites.

12 (5) TRANSFER OF INFORMATION AND KNOWL-
13 EDGE.—The Secretary shall establish mechanisms to
14 ensure that the information and knowledge gained
15 by participants in the pilot program are transferred
16 among the pilot program participants and to other
17 interested parties, including other applicants that
18 submitted applications.

19 (f) SCHEDULE.—

20 (1) PUBLICATION.—Not later than 3 months
21 after the date of the enactment of this Act, the Sec-
22 retary shall publish in the Federal Register, Com-
23 merce Business Daily, and elsewhere as appropriate,
24 a request for applications to undertake projects

1 under the pilot program. Applications shall be due
2 within 6 months of the publication of the notice.

3 (2) SELECTION.—Not later than 6 months after
4 the date by which applications for grants are due,
5 the Secretary shall select by competitive, peer review
6 all applications for projects to be awarded a grant
7 under the pilot program.

8 (g) LIMIT ON FUNDING.—The Secretary shall pro-
9 vide not less than 20 percent and not more than 25 per-
10 cent of the grant funding made available under this sec-
11 tion for the acquisition of ultra-low sulfur diesel vehicles.

12 **SEC. 15023. REPORTS TO CONGRESS.**

13 (a) INITIAL REPORT.—Not later than 2 months after
14 the date grants are awarded under this subtitle, the Sec-
15 retary shall transmit to the Congress a report con-
16 taining—

17 (1) an identification of the grant recipients and
18 a description of the projects to be funded;

19 (2) an identification of other applicants that
20 submitted applications for the pilot program; and

21 (3) a description of the mechanisms used by the
22 Secretary to ensure that the information and knowl-
23 edge gained by participants in the pilot program are
24 transferred among the pilot program participants

1 and to other interested parties, including other ap-
2 plicants that submitted applications.

3 (b) EVALUATION.—Not later than 3 years after the
4 date of the enactment of this Act, and annually thereafter
5 until the pilot program ends, the Secretary shall transmit
6 to the Congress a report containing an evaluation of the
7 effectiveness of the pilot program, including an assessment
8 of the benefits to the environment derived from the
9 projects included in the pilot program as well as an esti-
10 mate of the potential benefits to the environment to be
11 derived from widespread application of alternative fueled
12 vehicles and ultra-low sulfur diesel vehicles.

13 **SEC. 15024. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated to the Sec-
15 retary \$200,000,000 to carry out this subtitle, to remain
16 available until expended.

17 **Subtitle C—Hydrogen Fuel Cell**
18 **Heavy-Duty Vehicles**

19 **SEC. 15031. DEFINITION.**

20 For the purposes of this subtitle, the term “advanced
21 vehicle technologies program” means the program created
22 pursuant to section 5506 of title 49, United States Code.

23 **SEC. 15032. FINDINGS.**

24 The Congress makes the following findings:

1 (1) The Department of Energy and the Depart-
2 ment of Transportation jointly developed the consor-
3 tium-based advanced vehicle technologies program to
4 develop energy efficient and clean heavy-duty vehi-
5 cles in 1998.

6 (2) The majority of clean fuel vehicles in oper-
7 ation today are transit buses.

8 (3) Hydrogen fuel cell heavy-duty vehicle bus
9 deployments can most appropriately advance hydro-
10 gen fuel cell technology development due to central-
11 ized refueling, stable duty cycles, and fixed routes.

12 (4) Hydrogen fuel cell heavy-duty vehicle bus
13 deployments are the most effective manner in which
14 to advance technology developments for public
15 awareness, consumption, and acceptance.

16 **SEC. 15033. HYDROGEN FUEL CELL BUSES.**

17 The Secretary of Energy, through the advanced vehi-
18 cle technologies program, in coordination with the Sec-
19 retary of Transportation, shall advance the development
20 of fuel cell bus technologies by providing funding for 4
21 demonstration sites that—

22 (1) have or will soon have hydrogen infrastruc-
23 ture for fuel cell bus operation; and

24 (2) are operated by entities with experience in
25 the development of fuel cell bus technologies,

1 to enable the widespread utilization of fuel cell buses. Such
2 demonstrations shall address the reliability of fuel cell
3 heavy-duty vehicles, expense, infrastructure, containment,
4 storage, safety, training, and other issues.

5 **SEC. 15034. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated to the Sec-
7 retary of Energy \$10,000,000 for each of the fiscal years
8 2004 through 2008 for carrying out this subtitle.

9 **Subtitle D—Miscellaneous**

10 **SEC. 15041. RAILROAD EFFICIENCY.**

11 (a) ESTABLISHMENT.—The Secretary shall, in con-
12 junction with the Secretary of Transportation and the Ad-
13 ministrator of the Environmental Protection Agency, es-
14 tablish a public-private research partnership involving the
15 Federal Government, the railroad industry, locomotive
16 manufacturers and equipment suppliers, and the research
17 facility owned by the Federal Railroad Administration and
18 operated by contract. The goal of the research partnership
19 shall include developing and demonstrating locomotive
20 technologies that increase fuel economy, reduce emissions,
21 and lower costs.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to carry out the require-
24 ments of this section \$25,000,000 for fiscal year 2004,

1 \$30,000,000 for fiscal year 2005, and \$35,000,000 for fis-
2 cal year 2006.

3 **SEC. 15042. MOBILE EMISSION REDUCTIONS TRADING AND**
4 **CREDITING.**

5 Within 180 days after the date of enactment of this
6 Act, the Administrator of the Environmental Protection
7 Agency shall provide a report to the Congress on the Envi-
8 ronmental Protection Agency's experience with the trading
9 of mobile source emission reduction credits for use by own-
10 ers and operators of stationary source emission sources
11 to meet emission offset requirements within a nonattain-
12 ment area. The report shall describe—

13 (1) projects approved by the Environmental
14 Protection Agency that include the trading of mobile
15 source emission reduction credits for use by sta-
16 tionary sources in complying with offset require-
17 ments, including project and stationary sources loca-
18 tion, volumes of emissions offset and traded, a de-
19 scription of the sources of mobile emission reduction
20 credits, and, if available, the cost of the credits;

21 (2) the significant issues identified by the Envi-
22 ronmental Protection Agency in its consideration
23 and approval of trading in such projects;

24 (3) the requirements for monitoring and assess-
25 ing the air quality benefits of any approved project;

1 (4) the statutory authority upon which the En-
 2 vironmental Protection Agency has based approval
 3 of such projects;

4 (5) an evaluation of how the resolution of issues
 5 in approved projects could be utilized in other
 6 projects; and

7 (6) any other issues the Environmental Protec-
 8 tion Agency considers relevant to the trading and
 9 generation of mobile source emission reduction cred-
 10 its for use by stationary sources or for other pur-
 11 poses.

12 **SEC. 15043. IDLE REDUCTION TECHNOLOGIES.**

13 (a) DEFINITIONS.—For purposes of this section:

14 (1) IDLE REDUCTION TECHNOLOGY.—The term
 15 “idle reduction technology” means a device or sys-
 16 tem of devices utilized to reduce long-duration idling
 17 of a heavy-duty vehicle.

18 (2) HEAVY-DUTY VEHICLE.—The term “heavy-
 19 duty vehicle” means a vehicle that has a gross vehi-
 20 cle weight rating greater than 26,000 pounds and is
 21 powered by a diesel engine.

22 (3) LONG-DURATION IDLING.—The term “long-
 23 duration idling” means the operation of a main drive
 24 engine, for a period greater than 15 consecutive
 25 minutes, where the main drive engine is not engaged

1 in gear. Such term does not apply to routine stop-
2 pages associated with traffic movement or conges-
3 tion.

4 (b) STUDIES OF THE BENEFITS OF IDLE REDUCTION
5 TECHNOLOGIES.—

6 (1) POTENTIAL FUEL SAVINGS.—Not later than
7 90 days after the date of enactment of this section,
8 the Secretary of Energy shall, in consultation with
9 the Secretary of Transportation, commence a study
10 to analyze the potential fuel savings resulting from
11 use of idle reduction technologies.

12 (2) RECOGNITION OF BENEFITS OF ADVANCED
13 IDLE REDUCTION TECHNOLOGIES.—Within 90 days
14 after the date of enactment of this section, the Ad-
15 ministrator of the Environmental Protection Agency
16 is directed to commence a review of the Agency's
17 mobile source air emissions models used under the
18 Clean Air Act to determine whether such models ac-
19 curately reflect the emissions resulting from long-du-
20 ration idling of heavy-duty trucks and other vehicles
21 and engines, and shall update those models as the
22 Administrator deems appropriate. Additionally, with-
23 in 90 days after the date of enactment of this sec-
24 tion, the Administrator shall commence a review as
25 to the appropriate emissions reductions credit that

1 should be allotted under the Clean Air Act for the
2 use of advanced idle reduction technologies, and
3 whether such credits should be subject to an emis-
4 sions trading system, and shall revise Agency regula-
5 tions and guidance as the Administrator deems ap-
6 propriate.

7 (3) IDLING TECHNOLOGIES.—Not later than
8 180 days after the date of the enactment of this sec-
9 tion, the Secretary of Energy, in consultation with
10 the Secretary of Transportation and the Adminis-
11 trator of the Environmental Protection Agency, shall
12 commence a study to analyze where heavy duty and
13 other vehicles stop for long duration idling.

14 (c) VEHICLE WEIGHT EXEMPTION.—Section 127(a)
15 of title 23, United States Code, is amended by adding at
16 the end the following: “In instances where an idle reduc-
17 tion technology is installed onboard a motor vehicle, the
18 maximum gross vehicle weight limit and the axle weight
19 limit for any motor vehicle equipped with an idling reduc-
20 tion system may be increased by an amount necessary to
21 compensate for the additional weight of the idling reduc-
22 tion system, except that the weight limit increase shall be
23 no greater than 400 pounds.”.

1 **SEC. 15044. STUDY OF AVIATION FUEL CONSERVATION AND**
2 **EMISSIONS.**

3 The Administrator of the Federal Aviation Adminis-
4 tration and the Administrator of the Environmental Pro-
5 tection Agency shall jointly commence a study within 60
6 days after the date of enactment of this Act to identify
7 the impact of aircraft emissions on air quality in non-
8 attainment areas and to identify ways to promote fuel con-
9 servation measures for aviation, enhance fuel efficiency,
10 and reduce emissions. As part of this study, the Adminis-
11 trator of the Federal Aviation Administration and the Ad-
12 ministrator of the Environmental Protection Agency shall
13 focus on how air traffic management inefficiencies, such
14 as aircraft idling at airports, result in unnecessary fuel
15 burn and air emissions. Within 180 days after the com-
16 mencement of the study, the Administrator of the Federal
17 Aviation Administration and the Administrator of the En-
18 vironmental Protection Agency shall submit a report to
19 the Committees on Energy and Commerce and Transpor-
20 tation and Infrastructure of the House of Representatives
21 and the Committees on Environment and Public Works
22 and Commerce, Science, and Transportation of the Senate
23 containing the results of the study and recommendations
24 as to how unnecessary fuel use and emissions affecting
25 air quality may be reduced, without impacting safety and
26 security, increasing individual aircraft noise, and taking

1 into account all aircraft emissions and their relative im-
2 pact on human health.

3 **SEC. 15045. DIESEL FUELED VEHICLES.**

4 (a) DIESEL COMBUSTION AND AFTER TREATMENT
5 TECHNOLOGIES.—The Secretary of Energy shall accel-
6 erate efforts to improve diesel combustion and after-treat-
7 ment technologies for use in diesel fueled motor vehicles.

8 (b) GOAL.—

9 (1) COMPLIANCE WITH TIER 2 EMISSION
10 STANDARDS BY 2010.—The Secretary shall carry out
11 subsection (a) with a view to developing and dem-
12 onstrating diesel technology meeting tier 2 emission
13 standards not later than 2010.

14 (2) TIER 2 EMISSION STANDARDS DEFINED.—
15 In this subsection, the term “tier 2 emission stand-
16 ards” means the motor vehicle emission standards
17 promulgated by the Administrator of the Environ-
18 mental Protection Agency on February 10, 2000,
19 under sections 202 and 211 of the Clean Air Act to
20 apply to passenger cars, light trucks, and larger pas-
21 senger vehicles of model years after the 2003 vehicle
22 model year.

1 **SEC. 15046. WAIVERS OF ALTERNATIVE FUELED VEHICLE**
2 **FUELING REQUIREMENT.**

3 Section 400AA(a)(3)(E) of the Energy Policy and
4 Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended
5 to read as follows:

6 “(E)(i) Dual fueled vehicles acquired pursuant to this
7 section shall be operated on alternative fuels unless the
8 Secretary determines that an agency needs a waiver of
9 such requirement for vehicles in the fleet of the agency
10 in a particular geographic area where—

11 “(I) the alternative fuel otherwise required to
12 be used in the vehicle is not reasonably available to
13 retail purchasers of the fuel, as certified to the Sec-
14 retary by the head of the agency; or

15 “(II) the cost of the alternative fuel otherwise
16 required to be used in the vehicle is unreasonably
17 more expensive compared to gasoline, as certified by
18 the head of the agency.

19 “(ii) The Secretary shall monitor compliance with
20 this subparagraph by all such fleets and shall report annu-
21 ally to the Congress on the extent to which the require-
22 ments of this subparagraph are being achieved. The report
23 shall include information on annual reductions achieved
24 of petroleum-based fuels and the problems, if any, encoun-
25 tered in acquiring alternative fuels.”.

1 **SEC. 15047. TOTAL INTEGRATED THERMAL SYSTEMS.**

2 The Secretary shall—

3 (1) conduct a study of the benefits of total inte-
4 grated thermal systems in reducing demand for oil
5 and protecting the environment; and

6 (2) examine the feasibility of using total inte-
7 grated thermal systems in Department of Defense
8 and other Federal motor vehicle fleets.

9 **SEC. 15048. OIL BYPASS FILTRATION TECHNOLOGY.**

10 The Secretary of Energy and the Administrator of
11 the Environmental Protection Agency shall—

12 (1) conduct a joint study of the benefits of oil
13 bypass filtration technology in reducing demand for
14 oil and protecting the environment; and

15 (2) examine the feasibility of using oil bypass
16 filtration technology in Federal motor vehicle fleets.

17 **SEC. 15049. NATURAL GAS CONDENSATE STUDY.**

18 Not later than 18 months after the date of enactment
19 of this Act, the Secretary of Energy, in consultation with
20 the Administrator of the Environmental Protection Agen-
21 cy, shall transmit to the Congress the results of a study
22 to consider fuels derived from natural gas condensate and
23 the appropriate blending of such condensates. The study
24 shall consider—

25 (1) usage options;

26 (2) potential volume capacities;

- 1 (3) costs;
- 2 (4) air emissions;
- 3 (5) fuel efficiencies; and
- 4 (6) potential use in the Federal fleet program
- 5 under title III of the Energy Policy Act of 1992 (42
- 6 U.S.C. 13201 et seq.).

7 **SEC. 15050. STUDY ON REDUCING PETROLEUM CONSUMP-**
8 **TION.**

9 (a) IN GENERAL.—The Administrator of General
10 Services, in cooperation with the Secretary of Energy,
11 shall conduct a study to consider the merits of establishing
12 performance measures to guide the reduction of petroleum
13 consumption by Federal fleets.

14 (b) MATTERS TO BE ADDRESSED.—The study shall
15 assess the feasibility of performance measures—

16 (1) to enable agency and congressional decision-
17 makers to establish annual and long-term perform-
18 ance goals to define the level of petroleum consump-
19 tion reduction to be achieved by Federal fleets;

20 (2) to improve the effectiveness and account-
21 ability of Federal efforts to reduce petroleum con-
22 sumption and dependency;

23 (3) to enhance decisionmaking by providing ob-
24 jective information on achieving performance objec-
25 tives; and

1 (4) to provide an alternative to the mandated
2 alternative fueled vehicle requirements in section
3 303 of the Energy Policy Act of 1992 (42 U.S.C.
4 13212).

5 (c) REPORT.—Not later than 12 months after the
6 date of enactment of this Act, the Administrator shall sub-
7 mit to the Committees on Environment and Public Works
8 and Governmental Affairs of the Senate and the Commit-
9 tees on Energy and Commerce and Government Reform
10 of the House of Representatives a report on the study.

11 **SEC. 15051. CONSERVE BY BICYCLING PROGRAM.**

12 (a) DEFINITIONS.—In this section:

13 (1) PROGRAM.—The term “program” means
14 the Conserve by Bicycling Program established by
15 subsection (b).

16 (2) SECRETARY.—The term “Secretary” means
17 the Secretary of Transportation.

18 (b) ESTABLISHMENT.—There is established within
19 the Department of Transportation a program to be known
20 as the “Conserve by Bicycling Program”.

21 (c) PROJECTS.—

22 (1) IN GENERAL.—In carrying out the program,
23 the Secretary shall establish not more than 10 pilot
24 projects that are—

1 (A) dispersed geographically throughout
2 the United States; and

3 (B) designed to conserve energy resources
4 by encouraging the use of bicycles in place of
5 motor vehicles.

6 (2) REQUIREMENTS.—A pilot project described
7 in paragraph (1) shall—

8 (A) use education and marketing to con-
9 vert motor vehicle trips to bicycle trips;

10 (B) document project results and energy
11 savings (in estimated units of energy con-
12 served);

13 (C) facilitate partnerships among inter-
14 ested parties in at least 2 of the fields of—

- 15 (i) transportation;
16 (ii) law enforcement;
17 (iii) education;
18 (iv) public health;
19 (v) environment; and
20 (vi) energy;

21 (D) maximize bicycle facility investments;

22 (E) demonstrate methods that may be
23 used in other regions of the United States; and

24 (F) facilitate the continuation of ongoing
25 programs that are sustained by local resources.

1 (3) COST SHARING.—At least 20 percent of the
2 cost of each pilot project described in paragraph (1)
3 shall be provided from State or local sources.

4 (d) ENERGY AND BICYCLING RESEARCH STUDY.—

5 (1) IN GENERAL.—Not later than 2 years after
6 the date of enactment of this Act, the Secretary
7 shall enter into a contract with the National Acad-
8 emy of Sciences for, and the National Academy of
9 Sciences shall conduct and submit to Congress a re-
10 port on, a study on the feasibility of converting
11 motor vehicle trips to bicycle trips.

12 (2) COMPONENTS.—The study shall—

13 (A) document the results or progress of
14 the pilot projects under subsection (c);

15 (B) determine the type and duration of
16 motor vehicle trips that people in the United
17 States may feasibly make by bicycle, taking into
18 consideration factors such as—

19 (i) weather;

20 (ii) land use and traffic patterns;

21 (iii) the carrying capacity of bicycles;

22 and

23 (iv) bicycle infrastructure;

1 (C) determine any energy savings that
2 would result from the conversion of motor vehi-
3 cle trips to bicycle trips;

4 (D) include a cost-benefit analysis of bicy-
5 cle infrastructure investments; and

6 (E) include a description of any factors
7 that would encourage more motor vehicle trips
8 to be replaced with bicycle trips.

9 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
10 authorized to be appropriated to carry out this section
11 \$6,200,000, to remain available until expended, of
12 which—

13 (1) \$5,150,000 shall be used to carry out pilot
14 projects described in subsection (c);

15 (2) \$300,000 shall be used by the Secretary to
16 coordinate, publicize, and disseminate the results of
17 the program; and

18 (3) \$750,000 shall be used to carry out sub-
19 section (d).

1 **TITLE VI—ELECTRICITY**
2 **Subtitle A—Transmission Capacity**

3 **SEC. 16011. TRANSMISSION INFRASTRUCTURE IMPROVE-**
4 **MENT RULEMAKING.**

5 Part II of the Federal Power Act (16 U.S.C. 824 et
6 seq.) is amended by adding the following new section at
7 the end thereof:

8 **“SEC. 215. TRANSMISSION INFRASTRUCTURE IMPROVE-**
9 **MENT RULEMAKING.**

10 “(a) RULEMAKING REQUIREMENT.—Within 1 year
11 after the enactment of this section, the Commission shall
12 establish, by rule, incentive-based (including but not lim-
13 ited to performance-based) transmission rate treatments
14 to promote capital investment in the enlargement and im-
15 provement of facilities for the transmission of electric en-
16 ergy in interstate commerce as appropriate to—

17 “(1) promote economically efficient trans-
18 mission and generation of electricity;

19 “(2) provide a return on equity that attracts
20 new investment in transmission facilities and reason-
21 ably reflects the risks taken by public utilities in re-
22 structuring control of transmission assets; and

23 “(3) encourage deployment of transmission
24 technologies and other measures to increase the ca-

1 capacity and efficiency of existing transmission facili-
2 ties and improve the operation of such facilities.

3 The Commission may, from time to time, revise such rule.

4 “(b) FUNDING OF CERTAIN FACILITIES.—The rule
5 promulgated pursuant to this section shall provide that,
6 upon the request of a regional transmission organization
7 or other Commission-approved transmission organization,
8 new transmission facilities that increase the transfer capa-
9 bility of the transmission system shall be participant fund-
10 ed. In such rules, the Commission shall also provide guid-
11 ance as to what types of facilities may be participant fund-
12 ed.

13 “(c) JUST AND REASONABLE RATES.—With respect
14 to any transmission rate filed with the Commission on or
15 after the effective date of the rule promulgated under this
16 section, the Commission shall, in its review of such rate
17 under sections 205 and 206, apply the rules adopted pur-
18 suant to this section, including any revisions thereto.
19 Nothing in this section shall be construed to override,
20 weaken, or conflict with the procedural and other require-
21 ments of this part, including the requirement of sections
22 205 and 206 that all rates, charges, terms, and conditions
23 be just and reasonable and not unduly discriminatory or
24 preferential.”.

1 **SEC. 16012. SITING OF INTERSTATE ELECTRICAL TRANS-**
2 **MISSION FACILITIES.**

3 (a) AMENDMENT OF FEDERAL POWER ACT.—Part
4 II of the Federal Power Act is amended by adding at the
5 end the following:

6 **“SEC. 216. SITING OF INTERSTATE ELECTRICAL TRANS-**
7 **MISSION FACILITIES.**

8 “(a) TRANSMISSION STUDIES.—Within one year
9 after the enactment of this section, and every 3 years
10 thereafter, the Secretary of Energy shall conduct a study
11 of electric transmission congestion. After considering al-
12 ternatives and recommendations from interested parties
13 the Secretary shall issue a report, based on such study,
14 which may designate one or more geographic areas experi-
15 encing electric energy transmission congestion as ‘inter-
16 state congestion areas’.

17 “(b) CONSTRUCTION PERMIT.—The Commission is
18 authorized, after notice and an opportunity for hearing,
19 to issue permits for the construction or modification of
20 electric transmission facilities in interstate congestion
21 areas designated by the Secretary under subsection (a) if
22 the Commission makes each of the following findings:

23 “(1) A finding that—

24 “(A) the State in which the transmission
25 facilities are to be constructed or modified is

1 without authority to approve the siting of the
2 facilities, or

3 “(B) a State commission or body in the
4 State in which the transmission facilities are to
5 be constructed or modified that has authority to
6 approve the siting of the facilities has withheld
7 approval, conditioned its approval in such a
8 manner that the proposed construction or modi-
9 fication will not significantly reduce trans-
10 mission congestion in interstate commerce and
11 is otherwise not economically feasible, or de-
12 layed final approval for more than one year
13 after the filing of an application seeking ap-
14 proval or one year after the designation of the
15 relevant interstate congestion area, whichever is
16 later.

17 “(2) A finding that the facilities to be author-
18 ized by the permit will be used for the transmission
19 of electric energy in interstate commerce.

20 “(3) A finding that the proposed construction
21 or modification is consistent with the public interest.

22 “(4) A finding that the proposed construction
23 or modification will significantly reduce transmission
24 congestion in interstate commerce.

1 The Commission may include in a permit issued under this
2 section conditions consistent with the public interest.

3 “(c) PERMIT APPLICATIONS.—Permit applications
4 under subsection (b) shall be made in writing to the Com-
5 mission and verified under oath. The Commission shall
6 issue rules setting forth the form of the application, the
7 information it is to contain, and the manner of service of
8 notice of the permit application upon interested persons.

9 “(d) COMMENTS.—In any proceeding before the
10 Commission under subsection (b), the Commission shall
11 afford each State in which a transmission facility covered
12 by the permit is or will be located, each affected Federal
13 agency and Indian tribe, private property owners, and
14 other interested persons, a reasonable opportunity to
15 present their views and recommendations with respect to
16 the need for and impact of a facility covered by the permit.

17 “(e) RIGHTS-OF-WAY.—In the case of a permit under
18 subsection (b) for electric transmission facilities to be lo-
19 cated on property other than property owned by the
20 United States or a State, if the permit holder cannot ac-
21 quire by contract, or is unable to agree with the owner
22 of the property to the compensation to be paid for, the
23 necessary right-of-way to construct or modify such trans-
24 mission facilities, the permit holder may acquire the right-
25 of-way by the exercise of the right of eminent domain in

1 the district court of the United States for the district in
2 which the property concerned is located, or in the appro-
3 priate court of the State in which the property is located.
4 The practice and procedure in any action or proceeding
5 for that purpose in the district court of the United States
6 shall conform as nearly as may be with the practice and
7 procedure in similar action or proceeding in the courts of
8 the State where the property is situated.

9 “(f) STATE LAW.—Nothing in this section shall pre-
10 clude any person from constructing any transmission fa-
11 cilities pursuant to State law.

12 “(g) COMPLIANCE WITH OTHER LAWS.—Commis-
13 sion action under this section shall be subject to the Na-
14 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
15 et seq.) and all other applicable Federal laws.

16 “(h) COMPENSATION.—Any exercise of eminent do-
17 main authority pursuant to this section shall be considered
18 a taking of private property for which just compensation
19 is due. Just compensation shall be an amount equal to
20 the full fair market value of the property taken on the
21 date of the exercise of eminent domain authority, except
22 that the compensation shall exceed fair market value if
23 necessary to make the landowner whole for decreases in
24 the value of any portion of the land not subject to eminent
25 domain. Any parcel of land acquired by eminent domain

1 under this subsection shall be transferred back to the
2 owner from whom it was acquired (or his heirs or assigns)
3 if the land is not used for power line construction or modi-
4 fication within a reasonable period of time after the acqui-
5 sition. Property acquired under this subsection may not
6 be used for any heritage area, recreational trail, or park,
7 or for any other purpose (other than power line construc-
8 tion or modification, and for power line operation and
9 maintenance) without the consent of the owner of the par-
10 cel from whom the property was acquired (or his heirs or
11 assigns).

12 “(i) ERCOT.—Nothing in this section shall be con-
13 strued to authorize any interconnection with any facility
14 owned or operated by an entity referred to in section
15 212(k)(2)(B).

16 “(j) RIGHTS OF WAY ON FEDERAL LANDS.—

17 “(1) LEAD AGENCY.—If an applicant, or pro-
18 spective applicant, for Federal authorization related
19 to an electricity transmission or distribution facility
20 so requests, the Department of Energy (DOE) shall
21 act as the lead agency for purposes of coordinating
22 all applicable Federal authorization and related envi-
23 ronmental review of the facility. The term ‘Federal
24 authorization’ shall mean any authorization required
25 under Federal law in order to site a transmission or

1 distribution facility, including but not limited to
2 such permits, special use authorizations, certifi-
3 cations, opinions, or other approvals as may be re-
4 quired, whether issued by a Federal or a State agen-
5 cy. To the maximum extent practicable under appli-
6 cable Federal law, the Secretary of Energy shall co-
7 ordinate this Federal authorization and review proc-
8 ess with any Indian tribes, multi-State entities, and
9 State agencies that are responsible for conducting
10 any separate permitting and environmental reviews
11 of the facility, to ensure timely and efficient review
12 and permit decisions.

13 “(2) AUTHORITY TO SET DEADLINES.—As lead
14 agency, the Department of Energy, in consultation
15 with other Federal and, as appropriate, with Indian
16 tribes, multi-State entities, and State agencies that
17 are willing to coordinate their own separate permit-
18 ting and environmental reviews with the Federal au-
19 thorization and environmental reviews, shall estab-
20 lish prompt and binding intermediate milestones and
21 ultimate deadlines for the review of and Federal au-
22 thorization decisions relating to the proposed facil-
23 ity. The Secretary of Energy shall ensure that once
24 an application has been submitted with such data as
25 the Secretary deems necessary, all permit decisions

1 and related environmental reviews under all applica-
2 ble Federal laws shall be completed within 1 year or,
3 if a requirement of another provision of Federal law
4 makes this impossible, as soon thereafter as is prac-
5 ticable. The Secretary of Energy also shall provide
6 an expeditious pre-application mechanism for pro-
7 spective applicants to confer with the agencies in-
8 volved to have each such agency determine and com-
9 municate to the prospective applicant within 60 days
10 of when the prospective applicant submits a request
11 for such information concerning—

12 “(A) the likelihood of approval for a poten-
13 tial facility; and

14 “(B) key issues of concern to the agencies
15 and public.

16 “(3) CONSOLIDATED ENVIRONMENTAL REVIEW
17 AND RECORD OF DECISION.—The Secretary of En-
18 ergy, in consultation with the affected agencies, shall
19 prepare a single environmental review document,
20 which shall be used as the basis for all decisions on
21 the proposed project under Federal law. The docu-
22 ment may be an environmental assessment or envi-
23 ronmental impact statement under the National En-
24 vironmental Policy Act of 1969 if warranted, or such
25 other form of analysis as may be warranted. DOE

1 and other agencies shall streamline the review and
2 permitting of transmission and distribution facilities
3 within corridors designated under section 503 of the
4 Federal Land Policy and Management Act (43
5 U.S.C. 1763) by fully taking into account prior anal-
6 yses and decisions as to the corridors. The document
7 under this section may consist of or include an envi-
8 ronmental assessment, if allowed by law, or an envi-
9 ronmental impact statement, if warranted or re-
10 quired by law, or such other form of analysis as war-
11 ranted, consistent with any requirement of the Na-
12 tional Environmental Policy Act, the Federal Land
13 Policy and Management Act, or any other applicable
14 law. Such document shall include consideration by
15 the relevant agencies of any applicable criteria or
16 other matters as required under applicable laws.

17 “(4) APPEALS.—In the event that any agency
18 has denied a Federal authorization required for a
19 transmission or distribution facility, or has failed to
20 act by the deadline established by the Secretary pur-
21 suant to this section for deciding whether to issue
22 the authorization, the applicant or any State in
23 which the facility would be located may file an ap-
24 peal with the Secretary of Energy, who shall, in con-
25 sultation with the affected agency, review the denial

1 or take action on the pending application. Based on
2 the overall record and in consultation with the af-
3 fected agency, the Secretary may then either issue
4 the necessary authorization with any appropriate
5 conditions, or deny the application. The Secretary
6 shall issue a decision within 90 days of the filing of
7 the appeal. In making a decision under this para-
8 graph, the Secretary shall comply with all applicable
9 requirements of Federal law, including any require-
10 ments of the Endangered Species Act, the Clean
11 Water Act, the National Forest Management Act,
12 the National Environmental Policy Act, and the
13 Federal Land Management and Policy Act.

14 “(5) CONFORMING REGULATIONS AND MEMO-
15 RANDA OF AGREEMENT.—Not later than 18 months
16 after the date of enactment of this section, the Sec-
17 retary of Energy shall issue any regulations nec-
18 essary to implement the foregoing provisions. Not
19 later than 1 year after the date of enactment of this
20 section, the Secretary and the heads of all relevant
21 Federal departments and non-departmental agencies
22 shall, and interested Indian tribes, multi-State enti-
23 ties, and State agencies may, enter into Memoranda
24 of Agreement to ensure the timely and coordinated
25 review and permitting of electricity transmission and

1 distribution facilities. The head of each Federal de-
2 partment or non-departmental agency with approval
3 authority shall designate a senior responsible official
4 and dedicate sufficient other staff and resources to
5 ensure that the DOE regulations and any Memo-
6 randa are fully implemented.

7 “(6) MISCELLANEOUS.—Each Federal author-
8 ization for an electricity transmission or distribution
9 facility shall be issued for a duration, as determined
10 by the Secretary of Energy, commensurate with the
11 anticipated use of the facility and with appropriate
12 authority to manage the right-of-way for reliability
13 and environmental protection. Further, when such
14 authorizations expire, they shall be reviewed for re-
15 newal taking fully into account reliance on such elec-
16 tricity infrastructure, recognizing its importance for
17 public health, safety and economic welfare and as a
18 legitimate use of Federal lands.

19 “(7) MAINTAINING AND ENHANCING THE
20 TRANSMISSION INFRASTRUCTURE.—In exercising the
21 responsibilities under this section, the Secretary of
22 Energy shall consult regularly with the Federal En-
23 ergy Regulatory Commission (FERC) and FERC-
24 approved Regional Transmission Organizations and
25 Independent System Operators.

1 “(k) INTERSTATE COMPACTS.—The consent of Con-
2 gress is hereby given for States to enter into interstate
3 compacts establishing regional transmission siting agen-
4 cies to facilitate coordination among the States within
5 such areas for purposes of siting future electric energy
6 transmission facilities and to carry out State electric en-
7 ergy transmission siting responsibilities. The Secretary of
8 Energy may provide technical assistance to regional trans-
9 mission siting agencies established under this subsection.

10 “(l) SAVINGS CLAUSE.—Nothing in this section shall
11 be construed to affect any requirement of the environ-
12 mental laws of the United States, including, but not lim-
13 ited to, the National Environmental Policy Act of 1969.
14 This section shall not apply to any component of the Na-
15 tional Wilderness Preservation System, the National Wild
16 and Scenic Rivers System, or the National Park system
17 (including National Monuments therein).”.

18 (b) FEDERAL CORRIDORS.—The Secretary of the In-
19 terior, the Secretary of Energy, the Secretary of Agri-
20 culture, and the Chairman of the Council on Environ-
21 mental Quality shall, within 90 days of the date of enact-
22 ment of this subsection, submit a joint report to Congress
23 identifying the following:

24 (1) all existing designated transmission and dis-
25 tribution corridors on Federal land and the status of

1 work related to proposed transmission and distribu-
2 tion corridor designations, the schedule for com-
3 pleting such work, any impediments to completing
4 the work, and steps that Congress could take to ex-
5 pedite the process;

6 (2) the number of pending applications to lo-
7 cate transmission and distribution facilities on Fed-
8 eral lands, key information relating to each such fa-
9 cility, how long each application has been pending,
10 the schedule for issuing a timely decision as to each
11 facility, and progress in incorporating existing and
12 new such rights-of-way into relevant land use and
13 resource management plans or their equivalent; and
14 (3) the number of existing transmission and
15 distribution rights-of-way on Federal lands that will
16 come up for renewal within the following 5, 10, and
17 15 year periods, and a description of how the Secre-
18 taries plan to manage such renewals.

19 **SEC. 16013. TRANSMISSION TECHNOLOGIES.**

20 The Federal Energy Regulatory Commission shall
21 shall take affirmative steps in the exercise of its authori-
22 ties under the Federal Power Act to encourage the deploy-
23 ment of transmission technologies that utilize real time
24 monitoring and analytical software to increase and maxi-

1 mize the capacity and efficiency of transmission networks
 2 and to reduce line losses.

3 **Subtitle B—Transmission** 4 **Operation**

5 **SEC. 16021. OPEN ACCESS TRANSMISSION BY CERTAIN** 6 **UTILITIES.**

7 Part II of the Federal Power Act (16 U.S.C. 824 et
 8 seq.) is amended by inserting after section 211 the fol-
 9 lowing:

10 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-** 11 **TING UTILITIES.**

12 “(a) IN GENERAL.—Subject to section 212(h), the
 13 Commission may, by rule or order, require an unregulated
 14 transmitting utility to provide transmission services—

15 “(1) at rates that are comparable to those that
 16 the unregulated transmitting utility charges itself,
 17 and

18 “(2) on terms and conditions (not relating to
 19 rates) that are comparable to those under which
 20 such unregulated transmitting utility provides trans-
 21 mission services to itself and that are not unduly
 22 discriminatory or preferential.

23 “(b) EXEMPTIONS.—

1 “(1) IN GENERAL.—The Commission shall ex-
2 empt from any rule or order under this subsection
3 any unregulated transmitting utility that—

4 “(A)(i) sells no more than 4,000,000
5 megawatt hours of electricity per year; and

6 “(ii) is a distribution utility; or

7 “(B) does not own or operate any trans-
8 mission facilities that are necessary for oper-
9 ating an interconnected transmission system (or
10 any portion thereof); or

11 “(C) meets other criteria the Commission
12 determines to be in the public interest.

13 “(2) LOCAL DISTRIBUTION.— The requirements
14 of subsection (a) shall not apply to facilities used in
15 local distribution.

16 “(c) RATE CHANGING PROCEDURES.—The rate
17 changing procedures applicable to public utilities under
18 subsections (c) and (d) of section 205 are applicable to
19 unregulated transmitting utilities for purposes of this sec-
20 tion.

21 “(d) REMAND.—In exercising its authority under
22 paragraph (1), the Commission may remand transmission
23 rates to an unregulated transmitting utility for review and
24 revision where necessary to meet the requirements of sub-
25 section (a).

1 “(e) SECTION 211 REQUESTS.—The provision of
2 transmission services under subsection (a) does not pre-
3 clude a request for transmission services under section
4 211.

5 “(f) DEFINITIONS.—For purposes of this section—

6 “(1) The term ‘unregulated transmitting utility’
7 means an entity that—

8 “(A) owns or operates facilities used for
9 the transmission of electric energy in interstate
10 commerce, and

11 “(B) is either an entity described in sec-
12 tion 201(f) or a rural electric cooperative.

13 “(2) The term ‘distribution utility’ means an
14 unregulated transmitting utility that serves at least
15 ninety percent of its electric customers at retail.”.

16 **SEC. 16022. REGIONAL TRANSMISSION ORGANIZATIONS.**

17 (a) SENSE OF THE CONGRESS ON RTOs.—It is the
18 sense of Congress that, in order to promote fair, open ac-
19 cess to electric transmission service, benefit retail con-
20 sumers, facilitate wholesale competition, improve effi-
21 ciencies in transmission grid management, promote grid
22 reliability, remove opportunities for unduly discriminatory
23 or preferential transmission practices, and provide for the
24 efficient development of transmission infrastructure need-
25 ed to meet the growing demands of competitive wholesale

1 power markets, all transmitting utilities in interstate com-
2 merce should voluntarily become members of independ-
3 ently administered regional transmission organizations
4 that have operational control of interstate transmission fa-
5 cilities and do not own or control generation facilities used
6 to supply electric energy for sale at wholesale.

7 (b) SENSE OF THE CONGRESS ON CAPITAL INVEST-
8 MENT.—It is the sense of the Congress that the Federal
9 Energy Regulatory Commission should provide to any
10 transmitting utility that becomes a member of an oper-
11 ational regional transmitting organization approved by the
12 Commission a return on equity sufficient to attract new
13 investment capital for expansion of transmission capacity,
14 in accordance with sections 205 and 206 of the Federal
15 Power Act (16 U.S.C. 824d and 824e), including the re-
16 quirement that rates be just and reasonable.

17 (c) REPORT ON PENDING APPLICATIONS.—Not later
18 than 120 days after the date of enactment of this section,
19 the Federal Energy Regulatory Commission shall submit
20 to the Committee on Energy and Commerce of the United
21 States House of Representatives and the Committee on
22 Energy and Natural Resources of the United States Sen-
23 ate a report containing the following:

24 (1) A list of all regional transmission organiza-
25 tion applications filed at the Commission pursuant

1 to the Commission's Order No. 2000, including an
2 identification of each public utility and other entity
3 included within the proposed membership of the re-
4 gional transmission organization.

5 (2) A table showing the date each such applica-
6 tion was filed, the date of any revised filings of such
7 application, the date of each preliminary or final
8 Commission order regarding such application, and a
9 statement of whether the application has been re-
10 jected, preliminarily approved, finally approved, or
11 has some other status (including a description of
12 that status).

13 (3) For any application that has not been fi-
14 nally approved by the Commission, a detailed de-
15 scription of every aspect of the application that the
16 Commission has determined does not conform to the
17 requirements of Order No. 2000.

18 (4) For any application that has not been fi-
19 nally approved by the Commission, an explanation
20 by the Commission of why the items described pur-
21 suant to paragraph (3) constitute material non-
22 compliance with the requirements of the Commis-
23 sion's Order No. 2000 sufficient to justify denial of
24 approval by the Commission.

1 (5) For all regional transmission organization
2 applications filed pursuant to the Commission’s
3 Order No. 2000, whether finally approved or not—

4 (A) a discussion of that regional trans-
5 mission organization’s efforts to minimize rate
6 seams between itself and—

7 (i) other regional transmission organi-
8 zations; and

9 (ii) entities not participating in a re-
10 gional transmission organization; and

11 (B) a discussion of the impact of such
12 seams on consumers and wholesale competition;
13 and

14 (C) a discussion of minimizing cost-shifting
15 on consumers.

16 (d) FEDERAL UTILITY PARTICIPATION IN RTOS.—

17 (1) DEFINITIONS.—For purposes of this sec-
18 tion—

19 (A) The term “appropriate Federal regu-
20 latory authority” means—

21 (i) with respect to a Federal power
22 marketing agency, the Secretary of En-
23 ergy, except that the Secretary may des-
24 ignate the Administrator of a Federal
25 power marketing agency to act as the ap-

1 appropriate Federal regulatory authority with
2 respect to the transmission system of that
3 Federal power marketing agency; and

4 (ii) with respect to the Tennessee Val-
5 ley Authority, the Board of Directors of
6 the Tennessee Valley Authority.

7 (B) The term “Federal utility” means a
8 Federal power marketing agency or the Ten-
9 nessee Valley Authority.

10 (C) The term “transmission system”
11 means electric transmission facilities owned,
12 leased, or contracted for by the United States
13 and operated by a Federal utility.

14 (2) TRANSFER.—The appropriate Federal regu-
15 latory authority is authorized to enter into a con-
16 tract, agreement or other arrangement transferring
17 control and use of all or part of the Federal utility’s
18 transmission system to a regional transmission orga-
19 nization approved by the Federal Energy Regulatory
20 Commission. Such contract, agreement or arrange-
21 ment shall include—

22 (A) performance standards for operation
23 and use of the transmission system that the
24 head of the Federal utility determines necessary
25 or appropriate, including standards that assure

1 recovery of all the Federal utility's costs and
2 expenses related to the transmission facilities
3 that are the subject of the contract, agreement
4 or other arrangement, consistency with existing
5 contracts and third-party financing arrange-
6 ments, and consistency with said Federal util-
7 ity's statutory authorities, obligations, and limi-
8 tations;

9 (B) provisions for monitoring and over-
10 sight by the Federal utility of the regional
11 transmission organization's fulfillment of the
12 terms and conditions of the contract, agreement
13 or other arrangement, including a provision
14 that may provide for the resolution of disputes
15 through arbitration or other means with the re-
16 gional transmission organization or with other
17 participants, notwithstanding the obligations
18 and limitations of any other law regarding arbi-
19 tration; and

20 (C) a provision that allows the Federal
21 utility to withdraw from the regional trans-
22 mission organization and terminate the con-
23 tract, agreement or other arrangement in ac-
24 cordance with its terms.

1 Neither this section, actions taken pursuant to it,
2 nor any other transaction of a Federal utility using
3 a regional transmission organization shall serve to
4 confer upon the Federal Energy Regulatory Com-
5 mission jurisdiction or authority over the Federal
6 utility's electric generation assets, electric capacity
7 or energy that the Federal utility is authorized by
8 law to market, or the Federal utility's power sales
9 activities.

10 (3) EXISTING STATUTORY AND OTHER OBLIGA-
11 TIONS.—

12 (A) SYSTEM OPERATION REQUIRE-
13 MENTS.—Any statutory provision requiring or
14 authorizing a Federal utility to transmit electric
15 power or to construct, operate or maintain its
16 transmission system shall not be construed to
17 prohibit a transfer of control and use of its
18 transmission system pursuant to, and subject to
19 all requirements of paragraph (2).

20 (B) OTHER OBLIGATIONS.—This sub-
21 section shall not be construed to—

22 (i) suspend, or exempt any Federal
23 utility from, any provision of existing Fed-
24 eral law, including but not limited to any
25 requirement or direction relating to the use

of the Federal utility's transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(ii) authorize abrogation of any contract or treaty obligation.

SEC. 16023. NATIVE LOAD.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding the following new section at the end thereof:

“SEC. 217. SERVICE OBLIGATIONS OF LOAD-SERVING ENTITIES.

“(a) IN GENERAL.—In exercising authority under this Act, the Commission shall ensure that any load-serving entity that either—

“(1) owns transmission facilities for the transmission of electric energy in interstate commerce used to purchase or deliver electric energy to meet—

“(A) a service obligation to customers; or

“(B) an existing wholesale contractual obligation; or

“(2) holds a contract or service agreement for firm transmission service used to purchase or deliver electric energy to meet—

“(A) a service obligation to customers; or

1 “(B) an existing wholesale contractual obli-
2 gation,
3 shall be entitled to use such transmission facilities or
4 equivalent transmission rights to meet such obligations be-
5 fore transmission capacity is made available for other
6 uses.

7 “(b) USE BY SUCCESSOR IN INTEREST.—To the ex-
8 tent that all or a portion of the service obligation or con-
9 tractual obligation covered by subsection (a) is transferred
10 to another load serving entity, the successor shall be enti-
11 tled to use such transmission facilities or firm trans-
12 mission rights associated with the transferred service obli-
13 gation consistent with subsection (a). Subsequent trans-
14 fers to another load serving entity, or back to the original
15 load-serving entity, shall be entitled to the same rights.

16 “(c) OTHER ENTITIES.—The Commission may exer-
17 cise authority under this Act to make transmission rights
18 not used to meet an obligation covered by subsection (a)
19 available to other entities in a manner determined by the
20 Commission to be not unduly discriminatory or pref-
21 erential.

22 “(d) DEFINITIONS.—For the purposes of this section:

23 “(1) The term ‘load-serving entity’ means an
24 electric utility, transmitting utility or Federal power
25 marketing agency that has an obligation under Fed-

1 eral, State, or local law, or under long-term con-
2 tracts, to provide electric service to either—

3 “(A) electric consumers (as defined in sec-
4 tion 3(5) of the Public Utility Regulatory Poli-
5 cies Act of 1978 (16 U.S.C. 2602(5)); or

6 “(B) an electric utility as defined in sec-
7 tion 3(4) of the Public Utility Regulatory Poli-
8 cies Act of 1978 (16 U.S.C. 2602(5)) that has
9 an obligation to provide electric service to elec-
10 tric consumers.

11 Such obligations shall be deemed ‘service obliga-
12 tions’.

13 “(2) The term ‘existing wholesale contractual
14 obligation’ means an obligation under a firm long-
15 term wholesale contract that was in effect on March
16 28, 2003. A contract modification after March 28,
17 2003 (other than one that increases the quantity of
18 electric energy sold under the contract) shall not af-
19 fect the status of such contract as an existing whole-
20 sale contractual obligation.

21 “(e) RELATIONSHIP TO OTHER PROVISIONS.—To the
22 extent that a transmitting utility reserves transmission ca-
23 pacity (or reserves the equivalent amount of tradable
24 transmission rights) to provide firm transmission service
25 to meet service obligations or firm long-term wholesale

1 contractual obligations pursuant to subsection (a), that
 2 transmitting utility shall not be considered as engaging
 3 in undue discrimination or preference under this Act.

4 “(f) JURISDICTION.—This section shall not apply to
 5 an entity located in an area referred to in section
 6 212(k)(2)(A).

7 “(g) SAVINGS CLAUSE.—Nothing in this section shall
 8 affect any allocation of transmission rights by the PJM
 9 Interconnection, the New York Independent System Oper-
 10 ator, the New England Independent System Operator, the
 11 Midwest Independent System Operator, or the California
 12 Independent System Operator. Nothing in this section
 13 shall provide a basis for abrogating any contract for firm
 14 transmission service or rights in effect as of the date of
 15 enactment of this section.”.

16 **Subtitle C—Reliability**

17 **SEC. 16031. ELECTRIC RELIABILITY STANDARDS.**

18 Part II of the Federal Power Act (16 U.S.C 824 et
 19 seq.) is amended by inserting the following new section
 20 at the end thereof:

21 **“SEC. 218. ELECTRIC RELIABILITY.**

22 “(a) DEFINITIONS.—For purposes of this section—

23 “(1) The term ‘bulk-power system’ means—

24 “(A) facilities and control systems nec-
 25 essary for operating an interconnected electric

1 energy transmission network (or any portion
2 thereof); and

3 “(B) electric energy from generation facili-
4 ties needed to maintain transmission system re-
5 liability.

6 The term does not include facilities used in the local
7 distribution of electric energy.

8 “(2) The terms ‘Electric Reliability Organiza-
9 tion’ and ‘ERO’ mean the organization certified by
10 the Commission under subsection (c) the purpose of
11 which is to establish and enforce reliability stand-
12 ards for the bulk-power system, subject to Commis-
13 sion review.

14 “(3) The term ‘reliability standard’ means a re-
15 quirement, approved by the Commission under this
16 section, to provide for reliable operation of the bulk-
17 power system. The term includes requirements for
18 the operation of existing bulk-power system facilities
19 and the design of planned additions or modifications
20 to such facilities to the extent necessary to provide
21 for reliable operation of the bulk-power system, but
22 the term does not include any requirement to en-
23 large such facilities or to construct new transmission
24 capacity or generation capacity.

1 “(4) The term ‘reliable operation’ means oper-
2 ating the elements of the bulk-power system within
3 equipment and electric system thermal, voltage, and
4 stability limits so that instability, uncontrolled sepa-
5 ration, or cascading failures of such system will not
6 occur as a result of a sudden disturbance or unan-
7 ticipated failure of system elements.

8 “(5) The term ‘Interconnection’ means a geo-
9 graphic area in which the operation of bulk-power
10 system components is synchronized such that the
11 failure of one or more of such components may ad-
12 versely affect the ability of the operators of other
13 components within the system to maintain reliable
14 operation of the facilities within their control.

15 “(6) The term ‘transmission organization’
16 means a regional transmission organization, inde-
17 pendent system operator, independent transmission
18 provider, or other transmission organization finally
19 approved by the Commission for the operation of
20 transmission facilities.

21 “(7) The term ‘regional entity’ means an entity
22 having enforcement authority pursuant to subsection
23 (e)(4).

24 “(b) JURISDICTION AND APPLICABILITY.—(1) The
25 Commission shall have jurisdiction, within the United

1 States, over the ERO certified by the Commission under
2 subsection (c), any regional entities, and all users, owners
3 and operators of the bulk-power system, including but not
4 limited to the entities described in section 201(f), for pur-
5 poses of approving reliability standards established under
6 this section and enforcing compliance with this section. All
7 users, owners and operators of the bulk-power system
8 shall comply with reliability standards that take effect
9 under this section.

10 “(2) The Commission shall issue a final rule to imple-
11 ment the requirements of this section not later than 180
12 days after the date of enactment of this section.

13 “(c) CERTIFICATION.—Following the issuance of a
14 Commission rule under subsection (b)(2), any person may
15 submit an application to the Commission for certification
16 as the Electric Reliability Organization (ERO). The Com-
17 mission may certify one such ERO if the Commission de-
18 termines that such ERO—

19 “(1) has the ability to develop and enforce, sub-
20 ject to subsection (e)(2), reliability standards that
21 provide for an adequate level of reliability of the
22 bulk-power system;

23 “(2) has established rules that—

24 “(A) assure its independence of the users
25 and owners and operators of the bulk-power

1 system, while assuring fair stakeholder rep-
2 resentation in the selection of its directors and
3 balanced decisionmaking in any ERO com-
4 mittee or subordinate organizational structure;

5 “(B) allocate equitably reasonable dues,
6 fees, and other charges among end users for all
7 activities under this section;

8 “(C) provide fair and impartial procedures
9 for enforcement of reliability standards through
10 the imposition of penalties in accordance with
11 subsection (e) (including limitations on activi-
12 ties, functions, or operations, or other appro-
13 priate sanctions);

14 “(D) provide for reasonable notice and op-
15 portunity for public comment, due process,
16 openness, and balance of interests in developing
17 reliability standards and otherwise exercising its
18 duties; and

19 “(E) provide for taking, after certification,
20 appropriate steps to gain recognition in Canada
21 and Mexico.

22 “(d) RELIABILITY STANDARDS.—(1) The Electric
23 Reliability Organization shall file each reliability standard
24 or modification to a reliability standard that it proposes

1 to be made effective under this section with the Commis-
2 sion.

3 “(2) The Commission may approve, by rule or order,
4 a proposed reliability standard or modification to a reli-
5 ability standard if it determines that the standard is just,
6 reasonable, not unduly discriminatory or preferential, and
7 in the public interest. The Commission shall give due
8 weight to the technical expertise of the Electric Reliability
9 Organization with respect to the content of a proposed
10 standard or modification to a reliability standard and to
11 the technical expertise of a regional entity organized on
12 an Interconnection-wide basis with respect to a reliability
13 standard to be applicable within that Interconnection, but
14 shall not defer with respect to the effect of a standard
15 on competition. A proposed standard or modification shall
16 take effect upon approval by the Commission.

17 “(3) The Electric Reliability Organization shall
18 rebuttably presume that a proposal from a regional entity
19 organized on an Interconnection-wide basis for a reliability
20 standard or modification to a reliability standard to be ap-
21 plicable on an Interconnection-wide basis is just, reason-
22 able, and not unduly discriminatory or preferential, and
23 in the public interest.

24 “(4) The Commission shall remand to the Electric
25 Reliability Organization for further consideration a pro-

1 posed reliability standard or a modification to a reliability
2 standard that the Commission disapproves in whole or in
3 part.

4 “(5) The Commission, upon its own motion or upon
5 complaint, may order the Electric Reliability Organization
6 to submit to the Commission a proposed reliability stand-
7 ard or a modification to a reliability standard that ad-
8 dresses a specific matter if the Commission considers such
9 a new or modified reliability standard appropriate to carry
10 out this section.

11 “(6) The final rule adopted under subsection (b)(2)
12 shall include fair processes for the identification and time-
13 ly resolution of any conflict between a reliability standard
14 and any function, rule, order, tariff, rate schedule, or
15 agreement accepted, approved, or ordered by the Commis-
16 sion applicable to a transmission organization. Such trans-
17 mission organization shall continue to comply with such
18 function, rule, order, tariff, rate schedule or agreement ac-
19 cepted approved, or ordered by the Commission until—

20 “(A) the Commission finds a conflict exists be-
21 tween a reliability standard and any such provision;

22 “(B) the Commission orders a change to such
23 provision pursuant to section 206 of this part; and

24 “(C) the ordered change becomes effective
25 under this part.

1 If the Commission determines that a reliability standard
2 needs to be changed as a result of such a conflict, it shall
3 order the ERO to develop and file with the Commission
4 a modified reliability standard under paragraph (4) or (5)
5 of this subsection.

6 “(e) ENFORCEMENT.—(1) The ERO may impose,
7 subject to paragraph (2), a penalty on a user or owner
8 or operator of the bulk-power system for a violation of a
9 reliability standard approved by the Commission under
10 subsection (d) if the ERO, after notice and an opportunity
11 for a hearing—

12 “(A) finds that the user or owner or operator
13 has violated a reliability standard approved by the
14 Commission under subsection (d); and

15 “(B) files notice and the record of the pro-
16 ceeding with the Commission.

17 “(2) A penalty imposed under paragraph (1) may
18 take effect not earlier than the 31st day after the electric
19 reliability organization files with the Commission notice of
20 the penalty and the record of proceedings. Such penalty
21 shall be subject to review by the Commission, on its own
22 motion or upon application by the user, owner or operator
23 that is the subject of the penalty filed within 30 days after
24 the date such notice is filed with the Commission. Applica-
25 tion to the Commission for review, or the initiation of re-

1 view by the Commission on its own motion, shall not oper-
2 ate as a stay of such penalty unless the Commission other-
3 wise orders upon its own motion or upon application by
4 the user, owner or operator that is the subject of such
5 penalty. In any proceeding to review a penalty imposed
6 under paragraph (1), the Commission, after notice and op-
7 portunity for hearing (which hearing may consist solely
8 of the record before the electric reliability organization and
9 opportunity for the presentation of supporting reasons to
10 affirm, modify, or set aside the penalty), shall by order
11 affirm, set aside, reinstate, or modify the penalty, and,
12 if appropriate, remand to the electric reliability organiza-
13 tion for further proceedings. The Commission shall imple-
14 ment expedited procedures for such hearings.

15 “(3) On its own motion or upon complaint, the Com-
16 mission may order compliance with a reliability standard
17 and may impose a penalty against a user or owner or oper-
18 ator of the bulk-power system, if the Commission finds,
19 after notice and opportunity for a hearing, that the user
20 or owner or operator of the bulk-power system has en-
21 gaged or is about to engage in any acts or practices that
22 constitute or will constitute a violation of a reliability
23 standard.

24 “(4) The Commission shall establish regulations au-
25 thorizing the ERO to enter into an agreement to delegate

1 authority to a regional entity for the purpose of proposing
2 reliability standards to the ERO and enforcing reliability
3 standards under paragraph (1) if—

4 “(A) the regional entity is governed by—

5 “(i) an independent board;

6 “(ii) a balanced stakeholder board; or

7 “(iii) a combination independent and bal-
8 anced stakeholder board.

9 “(B) the regional entity otherwise satisfies the
10 provisions of subsection (c)(1) and (2); and

11 “(C) the agreement promotes effective and effi-
12 cient administration of bulk-power system reliability.

13 The Commission may modify such delegation. The ERO
14 and the Commission shall rebuttably presume that a pro-
15 posal for delegation to a regional entity organized on an
16 Interconnection-wide basis promotes effective and efficient
17 administration of bulk-power system reliability and should
18 be approved. Such regulation may provide that the Com-
19 mission may assign the ERO’s authority to enforce reli-
20 ability standards under paragraph (1) directly to a re-
21 gional entity consistent with the requirements of this para-
22 graph.

23 “(5) The Commission may take such action as is nec-
24 essary or appropriate against the ERO or a regional entity

1 to ensure compliance with a reliability standard or any
2 Commission order affecting the ERO or a regional entity.

3 “(6) Any penalty imposed under this section shall
4 bear a reasonable relation to the seriousness of the viola-
5 tion and shall take into consideration the efforts of such
6 user, owner, or operator to remedy the violation in a time-
7 ly manner.

8 “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-
9 NIZATION RULES.—The Electric Reliability Organization
10 shall file with the Commission for approval any proposed
11 rule or proposed rule change, accompanied by an expla-
12 nation of its basis and purpose. The Commission, upon
13 its own motion or complaint, may propose a change to the
14 rules of the Electric Reliability Organization. A proposed
15 rule or proposed rule change shall take effect upon a find-
16 ing by the Commission, after notice and opportunity for
17 comment, that the change is just, reasonable, not unduly
18 discriminatory or preferential, is in the public interest, and
19 satisfies the requirements of subsection (c).

20 “(g) RELIABILITY REPORTS.—The Electric Reli-
21 ability Organization shall conduct periodic assessments of
22 the reliability and adequacy of the bulk-power system in
23 North America.

24 “(h) COORDINATION WITH CANADA AND MEXICO.—
25 The President is urged to negotiate international agree-

1 ments with the governments of Canada and Mexico to pro-
2 vide for effective compliance with reliability standards and
3 the effectiveness of the Electric Reliability Organization
4 in the United States and Canada or Mexico.

5 “(i) SAVINGS PROVISIONS.—(1) The Electric Reli-
6 ability Organization shall have authority to develop and
7 enforce compliance with reliability standards for only the
8 bulk-power system.

9 “(2) This section does not authorize the Electric Reli-
10 ability Organization or the Commission to order the con-
11 struction of additional generation or transmission capacity
12 or to set and enforce compliance with standards for ade-
13 quacy or safety of electric facilities or services.

14 “(3) Nothing in this section shall be construed to pre-
15 empt any authority of any State to take action to ensure
16 the safety, adequacy, and reliability of electric service
17 within that State, as long as such action is not incon-
18 sistent with any reliability standard, except that the State
19 of New York may establish rules that result in greater
20 reliability within that State, as long as such action does
21 not result in lesser reliability outside the State than that
22 provided by the reliability standards.

23 “(4) Within 90 days of the application of the Electric
24 Reliability Organization or other affected party, and after
25 notice and opportunity for comment, the Commission shall

1 issue a final order determining whether a State action is
2 inconsistent with a reliability standard, taking into consid-
3 eration any recommendation of the Electric Reliability Or-
4 ganization.

5 “(5) The Commission, after consultation with the
6 Electric Reliability Organization and the State taking ac-
7 tion, may stay the effectiveness of any State action, pend-
8 ing the Commission’s issuance of a final order.

9 “(j) REGIONAL ADVISORY BODIES.—The Commis-
10 sion shall establish a regional advisory body on the petition
11 of at least two-thirds of the States within a region that
12 have more than one-half of their electric load served within
13 the region. A regional advisory body shall be composed or
14 of one member from each participating State in the region,
15 appointed by the Governor of each State, and may include
16 representatives of agencies, States, and provinces outside
17 the United States. A regional advisory body may provide
18 advice to the Electric Reliability Organization, a regional
19 entity, or the Commission regarding the governance of an
20 existing or proposed regional entity within the same re-
21 gion, whether a standard proposed to apply within the re-
22 gion is just, reasonable, not unduly discriminatory or pref-
23 erential, and in the public interest, whether fees proposed
24 to be assessed within the region are just, reasonable, not
25 unduly discriminatory or preferential, and in the public

1 interest and any other responsibilities requested by the
 2 Commission. The Commission may give deference to the
 3 advice of any such regional advisory body if that body is
 4 organized on an Interconnection-wide basis.

5 “(k) APPLICATION TO ALASKA AND HAWAII.—The
 6 provisions of this section do not apply to Alaska or Ha-
 7 waii.”.

8 **Subtitle D—PUHCA Amendments**

9 **SEC. 16041. SHORT TITLE.**

10 This subtitle may be cited as the “Public Utility
 11 Holding Company Act of 2003”.

12 **SEC. 16042. DEFINITIONS.**

13 For purposes of this subtitle:

14 (1) The term “affiliate” of a company means
 15 any company, 5 percent or more of the outstanding
 16 voting securities of which are owned, controlled, or
 17 held with power to vote, directly or indirectly, by
 18 such company.

19 (2) The term “associate company” of a com-
 20 pany means any company in the same holding com-
 21 pany system with such company.

22 (3) The term “Commission” means the Federal
 23 Energy Regulatory Commission.

24 (4) The term “company” means a corporation,
 25 partnership, association, joint stock company, busi-

1 ness trust, or any organized group of persons,
2 whether incorporated or not, or a receiver, trustee,
3 or other liquidating agent of any of the foregoing.

4 (5) The term “electric utility company” means
5 any company that owns or operates facilities used
6 for the generation, transmission, or distribution of
7 electric energy for sale.

8 (6) The terms “exempt wholesale generator”
9 and “foreign utility company” have the same mean-
10 ings as in sections 32 and 33, respectively, of the
11 Public Utility Holding Company Act of 1935 (15
12 U.S.C. 79z–5a, 79z–5b), as those sections existed on
13 the day before the effective date of this subtitle.

14 (7) The term “gas utility company” means any
15 company that owns or operates facilities used for
16 distribution at retail (other than the distribution
17 only in enclosed portable containers or distribution
18 to tenants or employees of the company operating
19 such facilities for their own use and not for resale)
20 of natural or manufactured gas for heat, light, or
21 power.

22 (8) The term “holding company” means—

23 (A) any company that directly or indirectly
24 owns, controls, or holds, with power to vote, 10
25 percent or more of the outstanding voting secu-

1 rities of a public utility company or of a holding
2 company of any public utility company; and

3 (B) any person, determined by the Com-
4 mission, after notice and opportunity for hear-
5 ing, to exercise directly or indirectly (either
6 alone or pursuant to an arrangement or under-
7 standing with one or more persons) such a con-
8 trolling influence over the management or poli-
9 cies of any public utility company or holding
10 company as to make it necessary or appropriate
11 for the rate protection of utility customers with
12 respect to rates that such person be subject to
13 the obligations, duties, and liabilities imposed
14 by this subtitle upon holding companies.

15 (9) The term “holding company system” means
16 a holding company, together with its subsidiary com-
17 panies.

18 (10) The term “jurisdictional rates” means
19 rates established by the Commission for the trans-
20 mission of electric energy in interstate commerce,
21 the sale of electric energy at wholesale in interstate
22 commerce, the transportation of natural gas in inter-
23 state commerce, and the sale in interstate commerce
24 of natural gas for resale for ultimate public con-

1 sumption for domestic, commercial, industrial, or
2 any other use.

3 (11) The term “natural gas company” means a
4 person engaged in the transportation of natural gas
5 in interstate commerce or the sale of such gas in
6 interstate commerce for resale.

7 (12) The term “person” means an individual or
8 company.

9 (13) The term “public utility” means any per-
10 son who owns or operates facilities used for trans-
11 mission of electric energy in interstate commerce or
12 sales of electric energy at wholesale in interstate
13 commerce.

14 (14) The term “public utility company” means
15 an electric utility company or a gas utility company.

16 (15) The term “State commission” means any
17 commission, board, agency, or officer, by whatever
18 name designated, of a State, municipality, or other
19 political subdivision of a State that, under the laws
20 of such State, has jurisdiction to regulate public util-
21 ity companies.

22 (16) The term “subsidiary company” of a hold-
23 ing company means—

24 (A) any company, 10 percent or more of
25 the outstanding voting securities of which are

1 directly or indirectly owned, controlled, or held
2 with power to vote, by such holding company;
3 and

4 (B) any person, the management or poli-
5 cies of which the Commission, after notice and
6 opportunity for hearing, determines to be sub-
7 ject to a controlling influence, directly or indi-
8 rectly, by such holding company (either alone or
9 pursuant to an arrangement or understanding
10 with one or more other persons) so as to make
11 it necessary for the rate protection of utility
12 customers with respect to rates that such per-
13 son be subject to the obligations, duties, and li-
14 abilities imposed by this subtitle upon sub-
15 sidiary companies of holding companies.

16 (17) The term “voting security” means any se-
17 curity presently entitling the owner or holder thereof
18 to vote in the direction or management of the affairs
19 of a company.

20 **SEC. 16043. REPEAL OF THE PUBLIC UTILITY HOLDING**
21 **COMPANY ACT OF 1935.**

22 The Public Utility Holding Company Act of 1935 (15
23 U.S.C. 79 et seq.) is repealed.

1 **SEC. 16044. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) IN GENERAL.—Each holding company and each
3 associate company thereof shall maintain, and shall make
4 available to the Commission, such books, accounts, memo-
5 randa, and other records as the Commission deems to be
6 relevant to costs incurred by a public utility or natural
7 gas company that is an associate company of such holding
8 company and necessary or appropriate for the protection
9 of utility customers with respect to jurisdictional rates.

10 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
11 ing company or of any subsidiary company of a holding
12 company shall maintain, and shall make available to the
13 Commission, such books, accounts, memoranda, and other
14 records with respect to any transaction with another affil-
15 iate, as the Commission deems to be relevant to costs in-
16 curred by a public utility or natural gas company that is
17 an associate company of such holding company and nec-
18 essary or appropriate for the protection of utility cus-
19 tomers with respect to jurisdictional rates.

20 (c) HOLDING COMPANY SYSTEMS.—The Commission
21 may examine the books, accounts, memoranda, and other
22 records of any company in a holding company system, or
23 any affiliate thereof, as the Commission deems to be rel-
24 evant to costs incurred by a public utility or natural gas
25 company within such holding company system and nec-

1 essary or appropriate for the protection of utility cus-
2 tomers with respect to jurisdictional rates.

3 (d) CONFIDENTIALITY.—No member, officer, or em-
4 ployee of the Commission shall divulge any fact or infor-
5 mation that may come to his or her knowledge during the
6 course of examination of books, accounts, memoranda, or
7 other records as provided in this section, except as may
8 be directed by the Commission or by a court of competent
9 jurisdiction.

10 **SEC. 16045. STATE ACCESS TO BOOKS AND RECORDS.**

11 (a) In GENERAL.—Upon the written request of a
12 State commission having jurisdiction to regulate a public
13 utility company in a holding company system, the holding
14 company or any associate company or affiliate thereof,
15 other than such public utility company, wherever located,
16 shall produce for inspection books, accounts, memoranda,
17 and other records that—

18 (1) have been identified in reasonable detail by
19 the State commission;

20 (2) the State commission deems are relevant to
21 costs incurred by such public utility company; and

22 (3) are necessary for the effective discharge of
23 the responsibilities of the State commission with re-
24 spect to such proceeding.

1 (b) LIMITATION.—Subsection (a) does not apply to
2 any person that is a holding company solely by reason of
3 ownership of one or more qualifying facilities under the
4 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
5 2601 et seq.).

6 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
7 duction of books, accounts, memoranda, and other records
8 under subsection (a) shall be subject to such terms and
9 conditions as may be necessary and appropriate to safe-
10 guard against unwarranted disclosure to the public of any
11 trade secrets or sensitive commercial information.

12 (d) EFFECT ON STATE LAW.—Nothing in this sec-
13 tion shall preempt applicable State law concerning the pro-
14 vision of books, accounts, memoranda, and other records,
15 or in any way limit the rights of any State to obtain books,
16 accounts, memoranda, and other records under any other
17 Federal law, contract, or otherwise.

18 (e) COURT JURISDICTION.—Any United States dis-
19 trict court located in the State in which the State commis-
20 sion referred to in subsection (a) is located shall have ju-
21 risdiction to enforce compliance with this section.

22 **SEC. 16046. EXEMPTION AUTHORITY.**

23 (a) RULEMAKING.—Not later than 90 days after the
24 effective date of this subtitle, the Commission shall pro-
25 mulgate a final rule to exempt from the requirements of

1 section 16044 (relating to Federal access to books and
2 records) any person that is a holding company, solely with
3 respect to one or more—

4 (1) qualifying facilities under the Public Utility
5 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
6 seq.);

7 (2) exempt wholesale generators; or

8 (3) foreign utility companies.

9 (b) OTHER AUTHORITY.—The Commission shall ex-
10 empt a person or transaction from the requirements of
11 section 16044 (relating to Federal access to books and
12 records) if, upon application or upon the motion of the
13 Commission—

14 (1) the Commission finds that the books, ac-
15 counts, memoranda, and other records of any person
16 are not relevant to the jurisdictional rates of a pub-
17 lic utility or natural gas company; or

18 (2) the Commission finds that any class of
19 transactions is not relevant to the jurisdictional
20 rates of a public utility or natural gas company.

21 **SEC. 16047. AFFILIATE TRANSACTIONS.**

22 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
23 ing in this subtitle shall limit the authority of the Commis-
24 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
25 to require that jurisdictional rates are just and reasonable,

1 including the ability to deny or approve the pass through
2 of costs, the prevention of cross-subsidization, and the pro-
3 mulgation of such rules and regulations as are necessary
4 or appropriate for the protection of utility consumers.

5 (b) RECOVERY OF COSTS.—Nothing in this subtitle
6 shall preclude the Commission or a State commission from
7 exercising its jurisdiction under otherwise applicable law
8 to determine whether a public utility company, public util-
9 ity, or natural gas company may recover in rates any costs
10 of an activity performed by an associate company, or any
11 costs of goods or services acquired by such public utility
12 company from an associate company.

13 **SEC. 16048. APPLICABILITY.**

14 Except as otherwise specifically provided in this sub-
15 title, no provision of this subtitle shall apply to, or be
16 deemed to include—

17 (1) the United States;

18 (2) a State or any political subdivision of a
19 State;

20 (3) any foreign governmental authority not op-
21 erating in the United States;

22 (4) any agency, authority, or instrumentality of
23 any entity referred to in paragraph (1), (2), or (3);
24 or

1 (5) any officer, agent, or employee of any entity
2 referred to in paragraph (1), (2), or (3) acting as
3 such in the course of his or her official duty.

4 **SEC. 16049. EFFECT ON OTHER REGULATIONS.**

5 Nothing in this subtitle precludes the Commission or
6 a State commission from exercising its jurisdiction under
7 otherwise applicable law to protect utility customers.

8 **SEC. 16050. ENFORCEMENT.**

9 The Commission shall have the same powers as set
10 forth in sections 306 through 317 of the Federal Power
11 Act (16 U.S.C. 825e–825p) to enforce the provisions of
12 this subtitle.

13 **SEC. 16051. SAVINGS PROVISIONS.**

14 (a) IN GENERAL.—Nothing in this subtitle prohibits
15 a person from engaging in or continuing to engage in ac-
16 tivities or transactions in which it is legally engaged or
17 authorized to engage on the date of enactment of this Act,
18 so long as that person continues to comply with the terms
19 of any such authorization, whether by rule or by order.

20 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
21 Nothing in this subtitle limits the authority of the Com-
22 mission under the Federal Power Act (16 U.S.C. 791a et
23 seq.) (including section 301 of that Act) or the Natural
24 Gas Act (15 U.S.C. 717 et seq.) (including section 8 of
25 that Act).

1 **SEC. 16052. IMPLEMENTATION.**

2 Not later than 12 months after the date of enactment
3 of this subtitle, the Commission shall—

4 (1) promulgate such regulations as may be nec-
5 essary or appropriate to implement this subtitle
6 (other than section 16045, relating to State access
7 to books and records); and

8 (2) submit to the Congress detailed rec-
9 ommendations on technical and conforming amend-
10 ments to Federal law necessary to carry out this
11 subtitle and the amendments made by this subtitle.

12 **SEC. 16053. TRANSFER OF RESOURCES.**

13 All books and records that relate primarily to the
14 functions transferred to the Commission under this sub-
15 title shall be transferred from the Securities and Exchange
16 Commission to the Commission.

17 **SEC. 16054. EFFECTIVE DATE.**

18 This subtitle shall take effect 12 months after the
19 date of enactment of this subtitle.

20 **SEC. 16055. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such funds
22 as may be necessary to carry out this subtitle.

23 **SEC. 16056. CONFORMING AMENDMENTS TO THE FEDERAL**
24 **POWER ACT.**

25 (a) CONFLICT OF JURISDICTION.—Section 318 of the
26 Federal Power Act (16 U.S.C. 825q) is repealed.

1 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-
2 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-
3 ing “1935” and inserting “2003”.

4 (2) Section 214 of the Federal Power Act (16 U.S.C.
5 824m) is amended by striking “1935” and inserting
6 “2003”.

7 **Subtitle E—PURPA Amendments**

8 **SEC. 16061. REAL-TIME PRICING AND TIME-OF-USE METER-** 9 **ING STANDARDS.**

10 (a) ADOPTION OF STANDARDS.—Section 111(d) of
11 the Public Utility Regulatory Policies Act of 1978 (16
12 U.S.C. 2621(d)) is amended by adding at the end the fol-
13 lowing:

14 “(11) REAL-TIME PRICING.—(A) Each electric
15 utility shall, at the request of an electric consumer,
16 provide electric service under a real-time rate sched-
17 ule, under which the rate charged by the electric
18 utility varies by the hour (or smaller time interval)
19 according to changes in the electric utility’s whole-
20 sale power cost. The real-time pricing service shall
21 enable the electric consumer to manage energy use
22 and cost through real-time metering and commu-
23 nications technology.

24 “(B) For purposes of implementing this para-
25 graph, any reference contained in this section to the

1 date of enactment of the Public Utility Regulatory
2 Policies Act of 1978 shall be deemed to be a ref-
3 erence to the date of enactment of this paragraph.

4 “(C) Notwithstanding subsections (b) and (c) of
5 section 112, each State regulatory authority shall
6 consider and make a determination concerning
7 whether it is appropriate to implement the standard
8 set out in subparagraph (A) not later than 1 year
9 after the date of enactment of this paragraph.

10 “(12) TIME-OF-USE METERING.—(A) Each elec-
11 tric utility shall, at the request of an electric con-
12 sumer, provide electric service under a time-of-use
13 rate schedule which enables the electric consumer to
14 manage energy use and cost through time-of-use me-
15 tering and technology.

16 “(B) For purposes of implementing this para-
17 graph, any reference contained in this section to the
18 date of enactment of the Public Utility Regulatory
19 Policies Act of 1978 shall be deemed to be a ref-
20 erence to the date of enactment of this paragraph.

21 “(C) Notwithstanding subsections (b) and (c) of
22 section 112, each State regulatory authority shall
23 consider and make a determination concerning
24 whether it is appropriate to implement the standards

1 set out in subparagraph (A) not later than 1 year
2 after the date of enactment of this paragraph.”.

3 (b) SPECIAL RULES.—Section 115 of the Public Util-
4 ity Regulatory Policies Act of 1978 (16 U.S.C. 2625) is
5 amended by adding at the end the following:

6 “(i) REAL-TIME PRICING.—In a State that permits
7 third-party marketers to sell electric energy to retail elec-
8 tric consumers, the electric consumer shall be entitled to
9 receive the same real-time metering and communication
10 service as a direct retail electric consumer of the electric
11 utility.

12 “(j) TIME-OF-USE METERING.—In a State that per-
13 mits third-party marketers to sell electric energy to retail
14 electric consumers, the electric consumer shall be entitled
15 to receive the same time-of-use metering and communica-
16 tion service as a direct retail electric consumer of the elec-
17 tric utility.”.

18 **SEC. 16062. COGENERATION AND SMALL POWER PRODUC-**
19 **TION PURCHASE AND SALE REQUIREMENTS.**

20 (a) TERMINATION OF MANDATORY PURCHASE AND
21 SALE REQUIREMENTS.—Section 210 of the Public Utility
22 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is
23 amended by adding at the end the following:

24 “(m) TERMINATION OF MANDATORY PURCHASE AND
25 SALE REQUIREMENTS.—

1 “(1) OBLIGATION TO PURCHASE.—After the
2 date of enactment of this subsection, no electric util-
3 ity shall be required to enter into a new contract or
4 obligation to purchase electric energy from a quali-
5 fying cogeneration facility or a qualifying small
6 power production facility under this section if the
7 Commission finds that—

8 “(A) the qualifying cogeneration facility or
9 qualifying small power production facility has
10 access to—

11 “(i) independently administered, auc-
12 tion-based day ahead and real time whole-
13 sale markets for the sale of electric energy,
14 and

15 “(ii) long-term wholesale markets for
16 the sale of capacity and electric energy;

17 “(B) the qualifying cogeneration facility or
18 qualifying small power production facility has
19 access to a competitive wholesale market for the
20 sale of electric energy that provides such quali-
21 fying cogeneration facility or qualifying small
22 power production facility with opportunities to
23 sell electric energy that, at a minimum, are
24 comparable to the opportunities provided by the

1 markets, or some minimum combination there-
2 of, described in subparagraph (A); or

3 “(C) the qualifying cogeneration facility
4 does not meet criteria established by the Com-
5 mission pursuant to the rulemaking set forth in
6 subparagraph (n) and has not filed with the
7 Commission a notice of self-certification or an
8 application for Commission certification under
9 18 C.F.R. 292.207 prior to the date of enact-
10 ment of this subsection.

11 “(2) COMMISSION REVIEW.—(A) Any electric
12 utility may file an application with the Commission
13 for relief from the mandatory purchase obligation
14 pursuant to this subsection on a utility-wide basis.
15 Such application shall set forth the reasons why
16 such relief is appropriate and describe how the con-
17 ditions set forth in subparagraphs (A) and (B) of
18 paragraph (1) of this subsection have been met.

19 “(B) After notice, including sufficient notice to
20 potentially affected qualifying facilities, and an op-
21 portunity for comment, and within 90 days of the
22 filing of an application under subparagraph (A), the
23 Commission shall make a final determination as to
24 whether the conditions set forth in subparagraphs
25 (A) and (B) of paragraph (1) have been met. The

1 Commission shall not be authorized to issue a tolling
2 order regarding such application or otherwise delay
3 a final decision regarding such application.

4 “(3) REINSTATEMENT OF OBLIGATION TO PUR-
5 CHASE.—(A) At any time after the Commission
6 makes a finding under paragraph (2) relieving an
7 electric utility of its obligation to purchase electric
8 energy, a qualifying cogeneration facility or a quali-
9 fying small power production facility may apply to
10 the Commission for an order reinstating the electric
11 utility’s obligation to purchase electric energy under
12 this section. Such application shall set forth the rea-
13 sons why such relief is no longer appropriate and de-
14 scribe how the tests set forth in subparagraphs (A)
15 and (B) of paragraph (1) of this subsection are no
16 longer met.

17 “(B) After notice, including sufficient notice to
18 potentially affected utilities, and opportunity for
19 comment, and within 90 days of the filing of an ap-
20 plication under subparagraph (A), the Commission
21 shall issue an order reinstating the electric utility’s
22 obligation to purchase electric energy under this sec-
23 tion if the Commission finds that the condition in
24 paragraph (1), which relieved the obligation to pur-
25 chase, is no longer met. The Commission shall not

1 be authorized to issue a tolling order regarding such
2 application or otherwise delay a final decision re-
3 garding such application.

4 “(4) OBLIGATION TO SELL.—After the date of
5 enactment of this subsection, no electric utility shall
6 be required to enter into a new contract or obliga-
7 tion to sell electric energy to a qualifying cogenera-
8 tion facility or a qualifying small power production
9 facility if—

10 “(A) competing retail electric suppliers are
11 willing and able to provide electric energy to the
12 qualifying cogeneration facility or qualifying
13 small power production facility, and

14 “(B) the electric utility is not required by
15 State law to sell electric energy in its service
16 territory.

17 “(5) NO EFFECT ON EXISTING RIGHTS AND
18 REMEDIES.—Nothing in this subsection affects the
19 rights or remedies of any party under any contract
20 or obligation, in effect or pending approval before
21 the appropriate State regulatory authority or non-
22 regulated electric utility on the date of enactment of
23 this subsection, to purchase electric energy or capac-
24 ity from or to sell electric energy or capacity to a

1 facility under this Act (including the right to recover
2 costs of purchasing electric energy or capacity).

3 “(6) RECOVERY OF COSTS.—

4 “(A) REGULATION.—To ensure recovery
5 by an electric utility that purchases electric en-
6 ergy or capacity from a qualifying facility pur-
7 suant to any legally enforceable obligation en-
8 tered into or imposed under this section of all
9 prudently incurred costs associated with the
10 purchases, the Commission shall issue and en-
11 force such regulations as may be required to en-
12 sure that the electric utility shall recover the
13 prudently incurred costs associated with such
14 purchases.

15 “(B) ENFORCEMENT.—A regulation under
16 subparagraph (A) shall be enforceable in ac-
17 cordance with the provisions of law applicable
18 to enforcement of regulations under the Federal
19 Power Act (16 U.S.C. 791a et seq.).

20 “(n) RULEMAKING FOR NEW FACILITIES.—

21 “(1) IN GENERAL.—Not later than 180 days
22 after the date of enactment of this subsection, the
23 Commission shall issue a rule revising the criteria
24 for qualifying cogeneration facilities in 18 C.F.R.
25 292.205. In particular, the Commission shall evalu-

1 ate the rules regarding qualifying facility criteria
2 and revise such rules, as necessary, to ensure—

3 “(A) that the thermal energy output of a
4 new qualifying cogeneration facility is used in a
5 productive and beneficial manner;

6 “(B) the electrical and thermal output of
7 the cogeneration facility is used predominantly
8 for commercial or industrial processes and not
9 intended predominantly for sale to an electric
10 utility; and

11 “(C) continuing progress in the develop-
12 ment of efficient electric energy generating
13 technology.

14 “(2) APPLICABILITY.—Any revisions made to
15 operating and efficiency standards shall be applica-
16 ble only to a cogeneration facility that—

17 “(A) was not a qualifying cogeneration fa-
18 cility, or

19 “(B) had not filed with the Commission a
20 notice of self-certification or an application for
21 Commission certification under 18 C.F.R.
22 292.207,

23 prior to the date of enactment of this subsection.

24 “(3) DEFINITION.—For purposes of this sub-
25 section, the term ‘commercial processes’ includes

1 uses of thermal and electric energy for educational
2 and healthcare facilities.

3 “(o) RULES FOR EXISTING FACILITIES.— Notwith-
4 standing rule revisions under subsection (n), the Commis-
5 sion’s rules in effect prior to the effective date of any re-
6 vised rules prescribed under subsection (n) shall continue
7 to apply to any cogeneration facility or small power pro-
8 duction facility that—

9 “(1) was a qualifying cogeneration facility or a
10 qualifying small power production facility, or

11 “(2) had filed with the Commission a notice of
12 self-certification or an application for Commission
13 certification under 18 C.F.R. 292.207,
14 prior to the date of enactment of subsections (m) and
15 (n).”.

16 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—
17 (1) Section 3(17)(C) of the Federal Power Act (16 U.S.C.
18 796(17)(C)) is amended to read as follows:

19 “(C) ‘qualifying small power production fa-
20 cility’ means a small power production facility
21 that the Commission determines, by rule, meets
22 such requirements (including requirements re-
23 specting minimum size, fuel use, and fuel effi-
24 ciency) as the Commission may, by rule, pre-
25 scribe.”.

1 (2) Section 3(18)(B) of the Federal Power Act (16
2 U.S.C. 796(18)(B)) is amended to read as follows:

3 “(B) ‘qualifying cogeneration facility’
4 means a cogeneration facility that the Commis-
5 sion determines, by rule, meets such require-
6 ments (including requirements respecting min-
7 imum size, fuel use, and fuel efficiency) as the
8 Commission may, by rule, prescribe.”.

9 **SEC. 16063. SMART METERING.**

10 (a) IN GENERAL.—Section 111(d) of the Public Utili-
11 ties Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
12 is amended by adding at the end the following:

13 “(13) TIME-BASED METERING AND COMMU-
14 NICATIONS.—(A) Not later than eighteen (18)
15 months after the date of enactment of this para-
16 graph, each electric utility shall offer each of its cus-
17 tomer classes, and provide individual customers upon
18 customer request, a time-based rate schedule under
19 which the rate charged by the electric utility varies
20 during different time periods and reflects the vari-
21 ance in the costs of generating and purchasing elec-
22 tricity at the wholesale level. The time-based rate
23 schedule shall enable the electric consumer to man-
24 age energy use and cost through advanced metering
25 and communications technology.

1 “(B) The types of time-based rate schedules
2 that may be offered under the schedule referred to
3 in subparagraph (A) include, among others, each the
4 following:

5 “(i) Time-Of-Use pricing whereby elec-
6 tricity prices are set for a specific time period
7 on an advance or forward basis, typically not
8 changing more often than twice a year. Prices
9 paid for energy consumed during these periods
10 shall be pre-established and known to con-
11 sumers in advance of such consumption, allow-
12 ing them to vary their demand and usage in re-
13 sponse to such prices and manage their energy
14 costs by shifting usage to a lower cost period or
15 reducing their consumption overall.

16 “(ii) Critical Peak Pricing whereby time-
17 of-use prices are in effect except for certain
18 peak days, when prices may reflect the costs of
19 generating and purchasing electricity at the
20 wholesale level and when consumers may receive
21 additional discounts for reducing peak period
22 energy consumption.

23 “(iii) Real-Time pricing whereby electricity
24 prices are set for a specific time period on an

1 advanced or forward basis and may change as
2 often as hourly.

3 “(C) Each electric utility subject to subpara-
4 graph (A) shall provide each customer requesting a
5 time-based rate with a time-based meter capable of
6 enabling the utility and customer to offer and re-
7 ceive such rate, respectively.

8 “(D) For purposes of implementing this para-
9 graph, any reference contained in this section to the
10 date of enactment of the Public Utility Regulatory
11 Policies Act of 1978 shall be deemed to be a ref-
12 erence to the date of enactment of this paragraph.

13 “(E) In a State that permits third-party mar-
14 keters to sell electric energy to retail electric con-
15 sumers, such consumers shall be entitled to receive
16 that same time-based metering and communications
17 device and service as a retail electric consumer of
18 the electric utility.

19 “(F) Notwithstanding subsections (b) and (c) of
20 section 112, each State regulatory authority shall,
21 not later than twelve (12) months after enactment
22 of this paragraph conduct an investigation in accord-
23 ance with section 115(i) and issue a decision wheth-
24 er it is appropriate to implement the standards set
25 out in subparagraphs (A) and (C).”.

1 (b) STATE INVESTIGATION OF DEMAND RESPONSE
2 AND TIME-BASED METERING.—Section 115 of the Public
3 Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)
4 is amended by adding the at the end the following:

5 “(k) TIME-BASED METERING AND COMMUNICA-
6 TIONS.—Each State regulatory authority shall, not later
7 than twelve (12) months after enactment of this sub-
8 section, conduct an investigation and issue a decision
9 whether or not it is appropriate for electric utilities to pro-
10 vide and install time-based meters and communications
11 devices for each of their customers which enable such cus-
12 tomers to participate in time-based pricing rate schedules
13 and other demand response programs.”.

14 (c) FEDERAL ASSISTANCE ON DEMAND RE-
15 SPONSE.—Section 132(a) of the Public Utility Regulatory
16 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
17 striking “and” at the end of paragraph (3), striking the
18 period at the end of paragraph (4) and inserting “; and”,
19 and by adding the following at the end thereof:

20 “(5) technologies, techniques and rate-making
21 methods related to advanced metering and commu-
22 nications and the use of these technologies, tech-
23 niques and methods in demand response programs.”.

1 (d) FEDERAL GUIDANCE.—Section 132 of the Public
2 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643)
3 is amended by adding the following at the end thereof:

4 “(d) DEMAND RESPONSE.—The Secretary shall be
5 responsible for each of the following:

6 “(1) Educating consumers on the availability,
7 advantages and benefits of advanced metering and
8 communications technologies including the funding
9 of demonstration or pilot projects.

10 “(2) Working with States, utilities, other energy
11 providers and advanced metering and communica-
12 tions experts to identify and address barriers to the
13 adoption of demand response programs.

14 “(3) Within 6 months of enactment, provide the
15 Congress with a report that identifies and quantifies
16 the national benefits of demand response and pro-
17 vides policy recommendations as to how to achieve
18 specific levels of such benefits by January 1, 2005.”.

19 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
20 TION.—

21 (1) POLICY.—It is the policy of the United
22 States to encourage States to coordinate, on a re-
23 gional basis, State energy policies to provide reliable
24 and affordable demand response services to the pub-
25 lic.

1 (2) TECHNICAL ASSISTANCE.—The Secretary of
2 Energy shall provide technical assistance to States
3 and regional organizations formed by two or more
4 States to assist them in—

5 (A) identifying the areas with the greatest
6 demand response potential;

7 (B) identifying and resolving problems in
8 transmission and distribution networks, includ-
9 ing through the use of demand response; and

10 (C) developing plans and programs to use
11 demand response to respond to peak demand or
12 emergency needs.

13 (3) REPORT.—The Federal Energy Regulatory
14 Commission shall prepare and publish an annual re-
15 port, by appropriate region, that assesses demand
16 response resources, including those available from all
17 consumer classes, and which identifies and reviews
18 each of the following:

19 (A) Saturation and penetration rate of ad-
20 vanced meters and communications tech-
21 nologies, devices and systems.

22 (B) Existing demand response programs
23 and time-based rate programs.

1 (C) The annual resource contribution of
2 demand resources, including the prior year and
3 following years.

4 (D) The potential for demand response as
5 a quantifiable, reliable resource for regional
6 planning purposes.

7 (E) Steps taken to ensure that, in regional
8 transmission planning and operations, that de-
9 mand resources are provided equitable treat-
10 ment as a quantifiable, reliable resource relative
11 to the resource obligations of any load-serving
12 entity, transmission provider or transmitting
13 party.

14 (f) COST RECOVERY OF DEMAND RESPONSE DE-
15 VICES.—It is the policy of the United States that time-
16 based pricing and other forms of demand response, where-
17 by electricity customers are provided with electricity price
18 signals and the ability to benefit by responding to them,
19 shall be encouraged and the deployment of such tech-
20 nology and devices that enable electricity customers to
21 participate in such pricing and demand response systems
22 shall be facilitated. It is further the policy of the United
23 States that the benefits of such demand response that ac-
24 crue to those not deploying such technology and devices,

1 but who are part of the same regional electricity entity,
2 shall be recognized.

3 **Subtitle F—Renewable Energy**

4 **SEC. 16071. NET METERING.**

5 (a) ADOPTION OF STANDARD.—Section 111(d) of the
6 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
7 2621(d)) is amended by adding at the end the following:

8 “(14) NET METERING.—(A) Each electric util-
9 ity shall make available upon request net metering
10 service to any electric consumer that the electric
11 utility serves.

12 “(B) For purposes of implementing this para-
13 graph, any reference contained in this section to the
14 date of enactment of the Public Utility Regulatory
15 Policies Act of 1978 shall be deemed to be a ref-
16 erence to the date of enactment of this paragraph.

17 “(C) Notwithstanding subsections (b) and (c) of
18 section 112, each State regulatory authority shall
19 consider and make a determination concerning
20 whether it is appropriate to implement the standard
21 set out in subparagraph (A) not later than 1 year
22 after the date of enactment of this paragraph.”.

23 (b) SPECIAL RULES FOR NET METERING.—Section
24 115 of the Public Utility Regulatory Policies Act of 1978

1 (16 U.S.C. 2625) is amended by adding at the end the
2 following:

3 “(l) NET METERING.—In undertaking the consider-
4 ation and making the determination under section 111
5 with respect to the standard concerning net metering es-
6 tablished by section 111(d)(14), the term ‘net metering
7 service’ shall mean a service provided in accordance with
8 the following standards:

9 “(1) RATES AND CHARGES.—An electric util-
10 ity—

11 “(A) shall charge the owner or operator of
12 an on-site generating facility rates and charges
13 that are identical to those that would be
14 charged other electric consumers of the electric
15 utility in the same rate class; and

16 “(B) shall not charge the owner or oper-
17 ator of an on-site generating facility any addi-
18 tional standby, capacity, interconnection, or
19 other rate or charge.

20 “(2) MEASUREMENT.—An electric utility that
21 sells electric energy to the owner or operator of an
22 on-site generating facility shall measure the quantity
23 of electric energy produced by the on-site facility
24 and the quantity of electric energy consumed by the
25 owner or operator of an on-site generating facility

1 during a billing period in accordance with normal
2 metering practices.

3 “(3) ELECTRIC ENERGY SUPPLIED EXCEEDING
4 ELECTRIC ENERGY GENERATED.—If the quantity of
5 electric energy sold by the electric utility to an on-
6 site generating facility exceeds the quantity of elec-
7 tric energy supplied by the on-site generating facility
8 to the electric utility during the billing period, the
9 electric utility may bill the owner or operator for the
10 net quantity of electric energy sold, in accordance
11 with normal metering practices.

12 “(4) ELECTRIC ENERGY GENERATED EXCEED-
13 ING ELECTRIC ENERGY SUPPLIED.—If the quantity
14 of electric energy supplied by the on-site generating
15 facility to the electric utility exceeds the quantity of
16 electric energy sold by the electric utility to the on-
17 site generating facility during the billing period—

18 “(A) the electric utility may bill the owner
19 or operator of the on-site generating facility for
20 the appropriate charges for the billing period in
21 accordance with paragraph (2); and

22 “(B) the owner or operator of the on-site
23 generating facility shall be credited for the ex-
24 cess kilowatt-hours generated during the billing

1 period, with the kilowatt-hour credit appearing
2 on the bill for the following billing period.

3 “(5) SAFETY AND PERFORMANCE STAND-
4 ARDS.—An eligible on-site generating facility and
5 net metering system used by an electric consumer
6 shall meet all applicable safety, performance, reli-
7 ability, and interconnection standards established by
8 the National Electrical Code, the Institute of Elec-
9 trical and Electronics Engineers, and Underwriters
10 Laboratories.

11 “(6) ADDITIONAL CONTROL AND TESTING RE-
12 QUIREMENTS.—The Commission, after consultation
13 with State regulatory authorities and nonregulated
14 electric utilities and after notice and opportunity for
15 comment, may adopt, by rule, additional control and
16 testing requirements for on-site generating facilities
17 and net metering systems that the Commission de-
18 termines are necessary to protect public safety and
19 system reliability.

20 “(7) DEFINITIONS.—For purposes of this sub-
21 section:

22 “(A) The term ‘eligible on-site generating
23 facility’ means—

24 “(i) a facility on the site of a residen-
25 tial electric consumer with a maximum

1 generating capacity of 10 kilowatts or less
2 that is fueled by solar energy, wind energy,
3 or fuel cells; or

4 “(ii) a facility on the site of a com-
5 mercial electric consumer with a maximum
6 generating capacity of 500 kilowatts or
7 less that is fueled solely by a renewable en-
8 ergy resource, landfill gas, or a high effi-
9 ciency system.

10 “(B) The term ‘renewable energy resource’
11 means solar, wind, biomass, or geothermal en-
12 ergy.

13 “(C) The term ‘high efficiency system’
14 means service fuel cells or combined heat and
15 power.

16 “(D) The term ‘net metering’ means serv-
17 ice to an electric consumer under which electric
18 energy generated by that electric consumer
19 from an eligible on-site generating facility and
20 delivered to the local distribution facilities may
21 be used to offset electric energy provided by the
22 electric utility to the electric consumer during
23 the applicable billing period.”.

1 **SEC. 16072. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

2 (a) INCENTIVE PAYMENTS.—Section 1212(a) of the
3 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is
4 amended by striking “and which satisfies” and all that
5 follows through “Secretary shall establish.” and inserting
6 “. If there are insufficient appropriations to make full pay-
7 ments for electric production from all qualified renewable
8 energy facilities in any given year, the Secretary shall as-
9 sign 60 percent of appropriated funds for that year to fa-
10 cilities that use solar, wind, geothermal, or closed-loop
11 (dedicated energy crops) biomass technologies to generate
12 electricity, and assign the remaining 40 percent to other
13 projects. The Secretary may, after transmitting to the
14 Congress an explanation of the reasons therefor, alter the
15 percentage requirements of the preceding sentence.”.

16 (b) QUALIFIED RENEWABLE ENERGY FACILITY.—
17 Section 1212(b) of the Energy Policy Act of 1992 (42
18 U.S.C. 13317(b)) is amended—

19 (1) by striking “a State or any political” and
20 all that follows through “nonprofit electrical cooper-
21 ative” and inserting “a not-for-profit electric cooper-
22 ative, a public utility described in section 115 of the
23 Internal Revenue Code of 1986, a State, Common-
24 wealth, territory, or possession of the United States
25 or the District of Columbia, or a political subdivision

1 thereof, or an Indian tribal government of subdivi-
2 sion thereof,”; and

3 (2) by inserting “landfill gas,” after “wind, bio-
4 mass,”.

5 (c) ELIGIBILITY WINDOW.—Section 1212(c) of the
6 Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is
7 amended by striking “during the 10-fiscal year period be-
8 ginning with the first full fiscal year occurring after the
9 enactment of this section” and inserting “after October
10 1, 2003, and before October 1, 2013”.

11 (d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of
12 the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))
13 is amended by inserting “landfill gas,” after “wind, bio-
14 mass,”.

15 (e) SUNSET.—Section 1212(f) of the Energy Policy
16 Act of 1992 (42 U.S.C. 13317(f)) is amended by striking
17 “the expiration of” and all that follows through “of this
18 section” and inserting “September 30, 2023”.

19 (f) AUTHORIZATION OF APPROPRIATIONS.—Section
20 1212(g) of the Energy Policy Act of 1992 (42 U.S.C.
21 13317(g)) is amended to read as follows:

22 “(g) AUTHORIZATION OF APPROPRIATIONS.—

23 “(1) IN GENERAL.—Subject to paragraph (2),
24 there are authorized to be appropriated such sums

1 as may be necessary to carry out this section for fis-
2 cal years 2003 through 2023.

3 “(2) AVAILABILITY OF FUNDS.—Funds made
4 available under paragraph (1) shall remain available
5 until expended.”.

6 **SEC. 16073. RENEWABLE ENERGY ON FEDERAL LANDS.**

7 (a) REPORT TO CONGRESS.—Within 24 months after
8 the date of enactment of this section, the Secretary of the
9 Interior, in cooperation with the Secretary of Agriculture,
10 shall develop and report to the Congress recommendations
11 on opportunities to develop renewable energy on public
12 lands under the jurisdiction of the Secretary of the Inte-
13 rior and National Forest System lands under the jurisdic-
14 tion of the Secretary of Agriculture. The report shall in-
15 clude—

16 (1) 5-year plans developed by the Secretary of
17 the Interior and the Secretary of Agriculture, re-
18 spectively, for encouraging the development of wind
19 and solar energy consistent with applicable law and
20 management plans; and

21 (2) an analysis of—

22 (A) the use of rights-of-ways, leases, or
23 other methods to develop wind and solar energy
24 on such lands;

1 (B) the anticipated benefits of grants,
2 loans, tax credits, or other provisions to pro-
3 mote wind and solar energy development on
4 such lands; and

5 (C) any issues that the Secretary of the
6 Interior or the Secretary of Agriculture have
7 encountered in managing wind or solar energy
8 projects on such lands, or believe are likely to
9 arise in relation to the development of wind or
10 solar energy on such lands;

11 (3) a list, developed in consultation with the
12 Secretary of Energy and the Secretary of Defense,
13 of lands under the jurisdiction of the Department of
14 Energy or Defense that would be suitable for devel-
15 opment for wind or solar energy, and any rec-
16 ommended statutory and regulatory mechanisms for
17 such development; and

18 (4) any recommendations pertaining to the
19 issues addressed in the report.

20 (b) NATIONAL ACADEMY OF SCIENCES STUDY.—

21 (1) IN GENERAL.—Within 90 days after the
22 date of the enactment of this Act, the Secretary of
23 the Interior shall contract with the National Acad-
24 emy of Sciences to—

1 (A) study the potential for the development
2 of wind, solar, and ocean energy on the Outer
3 Continental Shelf;

4 (B) assess existing Federal authorities for
5 the development of such resources; and

6 (C) recommend statutory and regulatory
7 mechanisms for such development.

8 (2) TRANSMITTAL OF RESULTS.—The results of
9 the study shall be transmitted to the Congress with-
10 in 24 months after the date of the enactment of this
11 Act.

12 **SEC. 16074. ASSESSMENT OF RENEWABLE ENERGY RE-**
13 **SOURCES.**

14 (a) RESOURCE ASSESSMENT.—Not later than 3
15 months after the date of enactment of this Act, and each
16 year thereafter, the Secretary of Energy shall review the
17 available assessments of renewable energy resources avail-
18 able within the United States, including solar, wind, bio-
19 mass, ocean, geothermal, and hydroelectric energy re-
20 sources, and undertake new assessments as necessary,
21 taking into account changes in market conditions, avail-
22 able technologies, and other relevant factors.

23 (b) CONTENTS OF REPORTS.—Not later than 1 year
24 after the date of enactment of this Act, and each year
25 thereafter, the Secretary shall publish a report based on

1 the assessment under subsection (a). The report shall con-
2 tain—

3 (1) a detailed inventory describing the available
4 amount and characteristics of the renewable energy
5 resources; and

6 (2) such other information as the Secretary be-
7 lieves would be useful in developing such renewable
8 energy resources, including descriptions of sur-
9 rounding terrain, population and load centers, near-
10 by energy infrastructure, location of energy and
11 water resources, and available estimates of the costs
12 needed to develop each resource, together with an
13 identification of any barriers to providing adequate
14 transmission for remote sources of renewable energy
15 resources to current and emerging markets, rec-
16 ommendations for removing or addressing such bar-
17 riers, and ways to provide access to the grid that do
18 not unfairly disadvantage renewable or other energy
19 producers.

20 **Subtitle G—Market Transparency,**
21 **Round Trip Trading Prohibi-**
22 **tion, and Enforcement**

23 **SEC. 16081. MARKET TRANSPARENCY RULES.**

24 Part II of the Federal Power Act is amended by add-
25 ing the following new section at the end thereof:

1 **“SEC. 219. MARKET TRANSPARENCY RULES.**

2 “(a) COMMISSION RULES.—Not later than 180 days
3 after the date of enactment of this section, the Commis-
4 sion shall issue rules establishing an electronic information
5 system to provide the Commission and the public with ac-
6 cess to such information as is necessary or appropriate
7 to facilitate price transparency and participation in mar-
8 kets subject to the Commission’s jurisdiction. Such sys-
9 tems shall provide information about the availability and
10 market price of sales of electric energy at wholesale in
11 interstate commerce and transmission of electric energy
12 in interstate commerce to the Commission, State commis-
13 sions, buyers and sellers of wholesale electric energy, users
14 of transmission services, and the public on a timely basis.
15 The Commission shall have authority to obtain such infor-
16 mation from any person, and any entity described in sec-
17 tion 201(f), who sells electric energy at wholesale in inter-
18 state commerce or provides transmission services in inter-
19 state commerce.

20 “(b) EXEMPTIONS.—The Commission shall exempt
21 from disclosure information it determines would, if dis-
22 closed, (1) be detrimental to the operation of an effective
23 market; or (2) jeopardize system security. This section
24 shall not apply to an entity described in section
25 212(k)(2)(B) with respect to transactions for the purchase

1 or sale of wholesale electric energy and transmission serv-
 2 ices within the area described in section 212(k)(2)(A).”.

3 **SEC. 16082. PROHIBITION ON ROUND TRIP TRADING.**

4 Part II of the Federal Power Act is amended by add-
 5 ing the following new section at the end thereof:

6 **“SEC. 220. PROHIBITION ON ROUND TRIP TRADING.**

7 “(a) PROHIBITION.—It shall be a violation of this Act
 8 for any person, and any entity described in section 201(f),
 9 willfully and knowingly to enter into any contract or other
 10 arrangement to execute a round-trip trade for the pur-
 11 chase or sale of electric energy at wholesale.

12 “(b) DEFINITION OF ROUND-TRIP TRADE.—For the
 13 purposes of this section, the term ‘round-trip trade’ means
 14 a transaction, or combination of transactions, in which a
 15 person or other entity—

16 “(1) enters into a contract or other arrange-
 17 ment to purchase from, or sell to, any other person
 18 or other entity electric energy at wholesale;

19 “(2) simultaneously with entering into the con-
 20 tract described in paragraph (1), arranges a finan-
 21 cially offsetting trade with such other person or enti-
 22 ty for the same quantity of electric energy so that,
 23 collectively, the purchase and sale transactions in
 24 themselves result in no financial gain or loss; and

1 “(3) has a specific intent to distort reported
2 revenues, trading volumes, or prices.”.

3 **SEC. 16083. CONFORMING CHANGES.**

4 Section 201(e) of the Federal Power Act is amended
5 by striking “or 212” and inserting “212, 215, 216, 217,
6 218, 219, or 220”. Section 201(b)(2) of such Act is
7 amended by striking “and 212” and inserting “212, 215,
8 216, 217, 218, 219, and 220”.

9 **SEC. 16084. ENFORCEMENT.**

10 (a) COMPLAINTS.—Section 306 of the Federal Power
11 Act (16 U.S.C. 825e) is amended by—

12 (1) inserting “electric utility,” after “Any per-
13 son,”; and

14 (2) inserting “, transmitting utility,” after “li-
15 censee” each place it appears.

16 (b) REVIEW OF COMMISSION ORDERS.—Section
17 313(a) of the Federal Power Act (16 U.S.C. 8251) is
18 amended by inserting “electric utility,” after “person,” in
19 the first place it appears and by striking “any person un-
20 less such person” and inserting “any entity unless such
21 entity”.

22 (c) CRIMINAL PENALTIES.—Section 316 of the Fed-
23 eral Power Act (16 U.S.C. 825o) is amended—

1 (1) in subsection (a), by striking “\$5,000” and
2 inserting “\$1,000,000”, and by striking “two years”
3 and inserting “five years”;

4 (2) in subsection (b), by striking “\$500” and
5 inserting “\$25,000”; and

6 (3) by striking subsection (c).

7 (d) CIVIL PENALTIES.—Section 316A of the Federal
8 Power Act (16 U.S.C. 825–1) is amended—

9 (1) in subsections (a) and (b), by striking “sec-
10 tion 211, 212, 213, or 214” each place it appears
11 and inserting “Part II”; and

12 (2) in subsection (b), by striking “\$10,000”
13 and inserting “\$1,000,000”.

14 **Subtitle H—Consumer Protections**

15 **SEC. 16091. REFUND EFFECTIVE DATE.**

16 Section 206(b) of the Federal Power Act (16 U.S.C.
17 824e(b)) is amended by—

18 (1) striking “the date 60 days after the filing
19 of such complaint nor later than 5 months after the
20 expiration of such 60-day period” in the second sen-
21 tence and inserting “the date of the filing of such
22 complaint nor later than 5 months after the filing of
23 such complaint”;

24 (2) striking “60 days after” in the third sen-
25 tence and inserting “of”;

1 (3) striking “expiration of such 60-day period”
2 in the third sentence and inserting “publication
3 date”; and

4 (4) in the fifth sentence after “rendered by the”
5 insert “date 60 days after the”.

6 **SEC. 16092. JURISDICTION OVER INTERSTATE SALES.**

7 (a) SCOPE OF AUTHORITY.—Section 206 of the Fed-
8 eral Power Act (16 U.S.C. 824e) is amended by adding
9 the following new subsection at the end thereof:

10 “(e)(1) If an entity that is not a public utility (includ-
11 ing an entity referred to in section 201(f)) voluntarily
12 makes a spot market sale of electric energy and such sale
13 violates Commission rules in effect at the time of such
14 sale, such entity shall be subject to the Commission’s re-
15 fund authority under this section with respect to such vio-
16 lation.

17 “(2) This section shall not apply to any entity that
18 is either—

19 “(A) an entity described in section 201(f); or

20 “(B) a rural electric cooperative,

21 that does not sell more than 4,000,000 megawatt hours
22 of electricity per year.

23 “(3) For purposes of this subsection, the term ‘spot
24 market sale’ means an agreement for the sale of electric
25 energy at wholesale in interstate commerce that is for 24

1 hours or less and that is entered into the day of, or the
2 day prior to, delivery.”.

3 (b) CONFORMING AMENDMENTS.—(1) Section 206 of
4 the Federal Power Act (16 U.S.C. 824e) is amended as
5 follows:

6 (A) In subsection (b), in the seventh sentence,
7 by striking “the public utility to make”.

8 (B) In the first sentence of subsection (a), by
9 striking “hearing had” and inserting “hearing held”.

10 (2) Section 201(b)(2) of such Act (16 U.S.C.
11 824(b)(2)) is amended as follows:

12 (A) In the first sentence by striking “sections
13 210” and inserting “sections 206(f), 210”.

14 (B) In the second sentence by striking “section
15 210” and inserting “section 206(f), 210,”.

16 (3) Section 201(e) of the Federal Power Act is
17 amended by striking “section 210” and inserting “section
18 206(f), 210”.

19 (c) UNIFORM INVESTIGATION AUTHORITY.—Section
20 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is
21 amended as follows:

22 (1) By inserting “, electric utility, transmitting
23 utility, or other entity” after “person” each time it
24 appears.

1 (2) By striking the period at the end of the
2 first sentence and inserting the following: “or in ob-
3 taining information about the sale of electric energy
4 at wholesale in interstate commerce and the trans-
5 mission of electric energy in interstate commerce.”.

6 (d) SANCTITY OF CONTRACT.—(1) The Federal En-
7 ergy Regulatory Commission shall have no authority to ab-
8 rogate or modify any provision of a contract, except upon
9 a finding, after notice and opportunity for a hearing, that
10 such action is necessary to protect the public interest, un-
11 less such contract expressly provides for a different stand-
12 ard of review.

13 (2) For purposes of this subsection, a contract is any
14 agreement, in effect and subject to the jurisdiction of the
15 Commission—

16 (A) under section 4 of the Natural Gas Act or
17 section 205 of the Federal Power Act; and

18 (B) that is not for sales in an organized ex-
19 change or auction spot market.

20 (3) This subsection shall not apply to any contract
21 executed before the date of enactment of this section un-
22 less such contract is an interconnection agreement, nor
23 shall this subsection affect the outcome in any proceeding
24 regarding any contract for sales of electric power executed
25 before the date of enactment of this section.

1 **SEC. 16093. CONSUMER PRIVACY.**

2 (a) IN GENERAL.—The Federal Trade Commission
3 shall issue rules protecting the privacy of electric con-
4 sumers from the disclosure of consumer information ob-
5 tained in connection with the sale or delivery of electric
6 energy to electric consumers. The Federal Trade Commis-
7 sion shall proceed in accordance with section 553 of title
8 5, United States Code, when prescribing a rule under this
9 section.

10 (b) STATE AUTHORITY.—If the Federal Trade Com-
11 mission determines that a State’s regulations provide
12 equivalent or greater protection than the provisions of this
13 section, such State regulations shall apply in that State
14 in lieu of the regulations issued by the Commission under
15 this section.

16 **SEC. 16094. UNFAIR TRADE PRACTICES.**

17 (a) SLAMMING.—The Federal Trade Commission
18 shall issue rules prohibiting the change of selection of an
19 electric utility except with the informed consent of the
20 electric consumer or if approved by the appropriate State
21 regulatory authority.

22 (b) CRAMMING.—The Federal Trade Commission
23 shall issue rules prohibiting the sale of goods and services
24 to an electric consumer unless expressly authorized by law
25 or the electric consumer.

1 (c) RULEMAKING.—The Federal Trade Commission
2 shall proceed in accordance with section 553 of title 5,
3 United States Code, when prescribing a rule under this
4 section.

5 (d) STATE AUTHORITY.—If the Federal Trade Com-
6 mission determines that a State’s regulations provide
7 equivalent or greater protection than the provisions of this
8 section, such State regulations shall apply in that State
9 in lieu of the regulations issued by the Commission under
10 this section.

11 **Subtitle I—Merger Review Reform**
12 **and Accountability**

13 **SEC. 16101. MERGER REVIEW REFORM AND ACCOUNT-**
14 **ABILITY.**

15 (a) MERGER REVIEW REFORM.—Within 180 days
16 after the date of enactment of this Act, the Secretary of
17 Energy, in consultation with the Federal Energy Regu-
18 latory Commission and the Department of Justice, shall
19 prepare, and transmit to the Committee on Energy and
20 Commerce of the House of Representatives and the Com-
21 mittee on Energy and Natural Resources of the Senate
22 each of the following:

23 (1) A study of the extent to which the authori-
24 ties vested in the Federal Energy Regulatory Com-

1 mission under section 203 of the Federal Power Act
2 are duplicative of authorities vested in—

3 (A) other agencies of Federal and State
4 government; and

5 (B) the Federal Energy Regulatory Com-
6 mission, including under sections 205 and 206
7 of the Federal Power Act.

8 (2) Recommendations on reforms to the Fed-
9 eral Power Act that would eliminate any unneces-
10 sary duplication in the exercise of regulatory author-
11 ity or unnecessary delays in the approval (or dis-
12 approval) of applications for the sale, lease, or other
13 disposition of public utility facilities.

14 (b) MERGER REVIEW ACCOUNTABILITY.—Not later
15 than 1 year after the date of enactment of this Act and
16 annually thereafter, with respect to all orders issued with-
17 in the preceding year that impose a condition on a sale,
18 lease, or other disposition of public utility facilities under
19 section 203(b) of the Federal Power Act, the Federal En-
20 ergy Regulatory Commission shall transmit a report to the
21 Committee on Energy and Commerce of the House of
22 Representatives and the Committee on Energy and Nat-
23 ural Resources of the Senate explaining each of the fol-
24 lowing:

25 (1) The condition imposed.

1 (2) Whether the Commission could have im-
2 posed such condition by exercising its authority
3 under any provision of the Federal Power Act other
4 than under section 203(b).

5 (3) If the Commission could not have imposed
6 such condition other than under section 203(b), why
7 the Commission determined that such condition was
8 consistent with the public interest.

9 **Subtitle J—Study of Economic**
10 **Dispatch**

11 **SEC. 16111. STUDY ON THE BENEFITS OF ECONOMIC DIS-**
12 **PATCH.**

13 (a) STUDY.—The Secretary of Energy, in coordina-
14 tion and consultation with the States, shall conduct a
15 study on—

16 (1) the procedures currently used by electric
17 utilities to perform economic dispatch;

18 (2) identifying possible revisions to those proce-
19 dures to improve the ability of nonutility generation
20 resources to offer their output for sale for the pur-
21 pose of inclusion in economic dispatch; and

22 (3) the potential benefits to residential, com-
23 mercial, and industrial electricity consumers nation-
24 ally and in each state if economic dispatch proce-
25 dures were revised to improve the ability of non-

1 utility generation resources to offer their output for
2 inclusion in economic dispatch.

3 (b) DEFINITION.—The term “economic dispatch”
4 when used in this section means the operation of genera-
5 tion facilities to produce energy at the lowest cost to reli-
6 ably serve consumers, recognizing any operational limits
7 of generation and transmission facilities.

8 (c) REPORT TO CONGRESS AND THE STATES.—Not
9 later than 90 days after the date of enactment of this Act,
10 and on a yearly basis following, the Secretary of Energy
11 shall submit a report to the Congress and the States on
12 the results of the study conducted under subsection (a),
13 including recommendations to the Congress and the States
14 for any suggested legislative or regulatory changes.

15 **TITLE VII—MOTOR FUELS**

16 **Subtitle A—General Provisions**

17 **SEC. 17101. RENEWABLE CONTENT OF MOTOR VEHICLE** 18 **FUEL.**

19 (a) IN GENERAL.—Section 211 of the Clean Air Act
20 (42 U.S.C. 7545) is amended—

21 (1) by redesignating subsection (o) as sub-
22 section (q); and

23 (2) by inserting after subsection (n) the fol-
24 lowing:

25 “(o) RENEWABLE FUEL PROGRAM.—

1 “(1) DEFINITIONS.—In this section:

2 “(A) CELLULOSIC BIOMASS ETHANOL.—

3 The term ‘cellulosic biomass ethanol’ means
4 ethanol derived from any lignocellulosic or
5 hemicellulosic matter that is available on a re-
6 newable or recurring basis, including—

7 “(i) dedicated energy crops and trees;

8 “(ii) wood and wood residues;

9 “(iii) plants;

10 “(iv) grasses;

11 “(v) agricultural residues;

12 “(vi) fibers;

13 “(vii) animal wastes, including poultry
14 fats and poultry wastes, and other waste
15 materials; and

16 “(viii) municipal solid waste.

17 “(B) RENEWABLE FUEL.—

18 “(i) IN GENERAL.—The term ‘renew-
19 able fuel’ means motor vehicle fuel that—

20 “(I)(aa) is produced from grain,
21 starch, oilseeds, or other biomass; or

22 “(bb) is natural gas produced
23 from a biogas source, including a
24 landfill, sewage waste treatment plant,

1 feedlot, or other place where decaying
2 organic material is found; and

3 “(II) is used to replace or reduce
4 the quantity of fossil fuel present in a
5 fuel mixture used to operate a motor
6 vehicle.

7 “(ii) INCLUSION.—The term ‘renew-
8 able fuel’ includes cellulosic biomass eth-
9 anol and biodiesel (as defined in section
10 312(f) of the Energy Policy Act of 1992
11 (42 U.S.C. 13220(f)) and any blending
12 components derived from renewable fuel
13 (provided that only the renewable fuel por-
14 tion of any such blending component shall
15 be considered part of the applicable volume
16 under the renewable fuel program estab-
17 lished by this subsection).

18 “(C) SMALL REFINERY.—The term ‘small
19 refinery’ means a refinery for which average ag-
20 gregate daily crude oil throughput for the cal-
21 endar year (as determined by dividing the ag-
22 gregate throughput for the calendar year by the
23 number of days in the calendar year) does not
24 exceed 75,000 barrels.

25 “(2) RENEWABLE FUEL PROGRAM.—

1 “(A) IN GENERAL.—Not later than 1 year
2 from enactment of this provision, the Adminis-
3 trator shall promulgate regulations ensuring
4 that gasoline sold or dispensed to consumers in
5 the contiguous United States, on an annual av-
6 erage basis, contains the applicable volume of
7 renewable fuel as specified in subparagraph
8 (B). Regardless of the date of promulgation,
9 such regulations shall contain compliance provi-
10 sions for refiners, blenders, and importers, as
11 appropriate, to ensure that the requirements of
12 this section are met, but shall not restrict where
13 renewables can be used, or impose any per-gal-
14 lon obligation for the use of renewables. If the
15 Administrator does not promulgate such regula-
16 tions, the applicable percentage, on a volume
17 percentage of gasoline basis, shall be 1.62 in
18 2005.

19 “(B) APPLICABLE VOLUME.—

20 “(i) CALENDAR YEARS 2005 THROUGH
21 2015.—For the purpose of subparagraph
22 (A), the applicable volume for any of cal-
23 endar years 2005 through 2015 shall be
24 determined in accordance with the fol-
25 lowing table:

Applicable volume of renewable fuel

“Calendar year:	(In billions of gallons)
2005	2.7
2006	2.7
2007	2.9
2008	2.9
2009	3.4
2010	3.4
2011	3.4
2012	4.2
2013	4.2
2014	4.2
2015	5.0.

1 “(ii) CALENDAR YEAR 2016 AND
2 THEREAFTER.—For the purpose of sub-
3 paragraph (A), the applicable volume for
4 calendar year 2016 and each calendar year
5 thereafter shall be equal to the product ob-
6 tained by multiplying—

7 “(I) the number of gallons of
8 gasoline that the Administrator esti-
9 mates will be sold or introduced into
10 commerce in the calendar year; and

11 “(II) the ratio that—

12 “(aa) 5.0 billion gallons of
13 renewable fuels; bears to

14 “(bb) the number of gallons
15 of gasoline sold or introduced
16 into commerce in calendar year
17 2015.

18 “(3) APPLICABLE PERCENTAGES.—Not later
19 than October 31 of each calendar year after 2002,
20 the Administrator of the Energy Information Ad-

1 ministration shall provide the Administrator an esti-
2 mate of the volumes of gasoline sales in the United
3 States for the coming calendar year. Based on such
4 estimates, the Administrator shall, by November 30
5 of each calendar year after 2003, determine and
6 publish in the Federal Register, the renewable fuel
7 obligation, on a volume percentage of gasoline basis,
8 applicable to refiners, blenders, and importers, as
9 appropriate, for the coming calendar year, to ensure
10 that the requirements of paragraph (2) are met. For
11 each calendar year, the Administrator shall establish
12 a single applicable percentage that applies to all par-
13 ties, and make provision to avoid redundant obliga-
14 tions. In determining the applicable percentages, the
15 Administrator shall make adjustments to account for
16 the use of renewable fuels by exempt small refineries
17 during the previous year.

18 “(4) CELLULOSIC BIOMASS ETHANOL.—For the
19 purpose of paragraph (2), 1 gallon of cellulosic bio-
20 mass ethanol shall be considered to be the equivalent
21 of 1.5 gallon of renewable fuel.

22 “(5) CREDIT PROGRAM.—

23 “(A) IN GENERAL.—The regulations pro-
24 mulgated to carry out this subsection shall pro-
25 vide for the generation of an appropriate

1 amount of credits by any person that refines,
2 blends, or imports gasoline that contains a
3 quantity of renewable fuel that is greater than
4 the quantity required under paragraph (2).
5 Such regulations shall provide for the genera-
6 tion of an appropriate amount of credits for
7 biodiesel fuel. If a small refinery notifies the
8 Administrator that it waives the exemption pro-
9 vided by this Act, the regulations shall provide
10 for the generation of credits by the small refin-
11 ery beginning in the year following such notifi-
12 cation.

13 “(B) USE OF CREDITS.—A person that
14 generates credits under subparagraph (A) may
15 use the credits, or transfer all or a portion of
16 the credits to another person, for the purpose
17 of complying with paragraph (2).

18 “(C) LIFE OF CREDITS.—A credit gen-
19 erated under this paragraph shall be valid to
20 show compliance:

21 “(i) in the calendar year in which the
22 credit was generated or the next calendar
23 year, or

24 “(ii) in the calendar year in which the
25 credit was generated or next two consecu-

1 tive calendar years if the Administrator
2 promulgates regulations under paragraph
3 (6).

4 “(D) INABILITY TO PURCHASE SUFFICIENT
5 CREDITS.—The regulations promulgated to
6 carry out this subsection shall include provi-
7 sions allowing any person that is unable to gen-
8 erate or purchase sufficient credits to meet the
9 requirements under paragraph (2) to carry for-
10 ward a renewables deficit provided that, in the
11 calendar year following the year in which the
12 renewables deficit is created, such person shall
13 achieve compliance with the renewables require-
14 ment under paragraph (2), and shall generate
15 or purchase additional renewables credits to off-
16 set the renewables deficit of the previous year.

17 “(6) SEASONAL VARIATIONS IN RENEWABLE
18 FUEL USE.—

19 “(A) STUDY.—For each of calendar years
20 2005 through 2015, the Administrator of the
21 Energy Information Administration, shall con-
22 duct a study of renewable fuels blending to de-
23 termine whether there are excessive seasonal
24 variations in the use of renewable fuels.

1 “(B) REGULATION OF EXCESSIVE SEA-
2 SONAL VARIATIONS.—If, for any calendar year,
3 the Administrator of the Energy Information
4 Administration, based on the study under sub-
5 paragraph (A), makes the determinations speci-
6 fied in subparagraph (C), the Administrator
7 shall promulgate regulations to ensure that 35
8 percent or more of the quantity of renewable
9 fuels necessary to meet the requirement of
10 paragraph (2) is used during each of the peri-
11 ods specified in subparagraph (D) of each sub-
12 sequent calendar year.

13 “(C) DETERMINATIONS.—The determina-
14 tions referred to in subparagraph (B) are
15 that—

16 “(i) less than 35 percent of the quan-
17 tity of renewable fuels necessary to meet
18 the requirement of paragraph (2) has been
19 used during one of the periods specified in
20 subparagraph (D) of the calendar year;

21 “(ii) a pattern of excessive seasonal
22 variation described in clause (i) will con-
23 tinue in subsequent calendar years; and

24 “(iii) promulgating regulations or
25 other requirements to impose a 35% or

1 more seasonal use of renewable fuels will
2 not prevent or interfere with the attain-
3 ment of national ambient air quality stand-
4 ards or significantly increase the price of
5 motor fuels to the consumer.

6 “(D) PERIODS.—The two periods referred
7 to in this paragraph are—

8 “(i) April through September; and

9 “(ii) January through March and Oc-
10 tober through December.

11 “(E) EXCLUSIONS.—Renewable fuels
12 blended or consumed in 2005 in a State which
13 has received a waiver under section 209(b) shall
14 not be included in the study in subparagraph
15 (A).

16 “(7) WAIVERS.—

17 “(A) IN GENERAL.—The Administrator, in
18 consultation with the Secretary of Agriculture
19 and the Secretary of Energy, may waive the re-
20 quirement of paragraph (2) in whole or in part
21 on petition by one or more States by reducing
22 the national quantity of renewable fuel required
23 under this subsection—

24 “(i) based on a determination by the
25 Administrator, after public notice and op-

1 portunity for comment, that implementa-
2 tion of the requirement would have a sig-
3 nificant and meaningful adverse impact on
4 the economy or environment of a State, a
5 region, or the United States, or will pre-
6 vent or interfere with the attainment of a
7 national ambient air quality standard in
8 any area of a State; or

9 “(ii) based on a determination by the
10 Administrator, after public notice and op-
11 portunity for comment, that there is an in-
12 adequate domestic supply or distribution
13 capacity to meet the requirement.

14 “(B) PETITIONS FOR WAIVERS.—The Ad-
15 ministrator, in consultation with the Secretary
16 of Agriculture and the Secretary of Energy,
17 shall approve or disapprove a State petition for
18 a waiver of the requirement of paragraph (2)
19 within 90 days after the date on which the peti-
20 tion is received by the Administrator. If the Ad-
21 ministrator does not act to approve or dis-
22 approve a State petition for a waiver within 90
23 days, the Administrator shall publish a notice
24 setting forth the reasons for not acting within
25 the required 90-day period.

1 “(C) TERMINATION OF WAIVERS.—A waiver
2 er granted under subparagraph (A) shall termi-
3 nate after 1 year, but may be renewed by the
4 Administrator after consultation with the Sec-
5 retary of Agriculture and the Secretary of En-
6 ergy.

7 “(8) STUDY AND WAIVER FOR INITIAL YEAR OF
8 PROGRAM.—Not later than 180 days from enact-
9 ment, the Secretary of Energy shall complete for the
10 Administrator a study assessing whether the renew-
11 able fuels requirement under paragraph (2) will like-
12 ly result in significant adverse consumer impacts in
13 2005, on a national, regional or State basis. Such
14 study shall evaluate renewable fuel supplies and
15 prices, blendstock supplies, and supply and distribu-
16 tion system capabilities. Based on such study, the
17 Secretary shall make specific recommendations to
18 the Administrator regarding waiver of the require-
19 ments of paragraph (2), in whole or in part, to avoid
20 any such adverse impacts. Within 270 days from en-
21 actment, the Administrator shall, consistent with the
22 recommendations of the Secretary waive, in whole or
23 in part, the renewable fuels requirement under para-
24 graph (2) by reducing the national quantity of re-
25 newable fuel required under this subsection in 2005.

1 This provision shall not be interpreted as limiting
2 the Administrator’s authority to waive the require-
3 ments of paragraph (2) in whole, or in part, under
4 paragraph (7) or paragraph (9), pertaining to waiv-
5 ers.

6 “(9) ASSESSMENT AND WAIVER.—The Sec-
7 retary of Energy, in consultation with the Adminis-
8 trator of the Environmental Protection Agency and
9 the Secretary of Agriculture on his own motion, or
10 upon petition of any State shall evaluate the require-
11 ment of paragraph (2) and determine, prior to Janu-
12 ary 1, 2007, or prior to January 1 of any subse-
13 quent year in which the applicable volume of renew-
14 able fuel is increased under paragraph (2)(B),
15 whether the requirement of paragraph (2), including
16 the applicable volume of renewable fuel contained in
17 paragraph (2)(B) should remain in effect, in whole
18 or in part, during 2007 or any year or years subse-
19 quent to 2007. In evaluating the requirement of
20 paragraph (2) and in making any determination
21 under this section, the Secretary shall consider the
22 best available information and data collected by ac-
23 cepted methods or best available means regarding—

24 “(A) the capacity of renewable fuel pro-
25 ducers to supply an adequate amount of renew-

1 able fuel at competitive prices to fulfill the re-
2 quirement in paragraph (2);

3 “(B) the potential of the requirement in
4 paragraph (2) to significantly raise the price of
5 gasoline, food or heating oil for consumers in
6 any significant area or region of the country
7 above the price that would otherwise apply to
8 such commodities in the absence of the require-
9 ment;

10 “(C) the potential of the requirement in
11 paragraph (2) to interfere with the supply of
12 fuel in any significant gasoline market or region
13 of the country, including interference with the
14 efficient operation of refiners, blenders, import-
15 ers, wholesale suppliers, and retail vendors of
16 gasoline, and other motor fuels; and

17 “(D) the potential of the requirement to
18 cause or promote exceedences of Federal, State,
19 or local air quality standards.

20 If the Secretary determines, after public notice and
21 the opportunity for comment, that the requirement
22 of paragraph (2) would have significant and mean-
23 ingful adverse impact on the supply of fuel and re-
24 lated infrastructure or on the economy, environment,
25 public health or environment of any significant area

1 or region of the country, the Secretary may waive,
2 in whole or in part, the requirement of paragraph
3 (2) in any one year or period of years as well as re-
4 duce the applicable volume of renewable fuel con-
5 tained in paragraph (2)(B) in any one year or period
6 of years.

7 “(10) SMALL REFINERIES.—

8 “(A) IN GENERAL.—The requirement of
9 paragraph (2) shall not apply to small refineries
10 until the first calendar year beginning more
11 than 5 years after the first year set forth in the
12 table in paragraph (2)(B)(i). Not later than De-
13 cember 31, 2006, the Secretary of Energy shall
14 complete for the Administrator a study to de-
15 termine whether the requirement of paragraph
16 (2) would impose a disproportionate economic
17 hardship on small refineries. For any small re-
18 finery that the Secretary of Energy determines
19 would experience a disproportionate economic
20 hardship, the Administrator shall extend the
21 small refinery exemption for such small refinery
22 for no less than two additional years.

23 “(B) ECONOMIC HARDSHIP.—

24 “(i) EXTENSION OF EXEMPTION.—A
25 small refinery may at any time petition the

1 Administrator for an extension of the ex-
2 emption from the requirement of para-
3 graph (2) for the reason of dispropor-
4 tionate economic hardship. In evaluating a
5 hardship petition, the Administrator, in
6 consultation with the Secretary of Energy,
7 shall consider the findings of the study in
8 addition to other economic factors.

9 “(ii) DEADLINE FOR ACTION ON PETI-
10 TIONS.—The Administrator shall act on
11 any petition submitted by a small refinery
12 for a hardship exemption not later than 90
13 days after the receipt of the petition.

14 “(C) CREDIT PROGRAM.—If a small refin-
15 ery notifies the Administrator that it waives the
16 exemption provided by this Act, the regulations
17 shall provide for the generation of credits by
18 the small refinery beginning in the year fol-
19 lowing such notification.

20 “(D) OPT-IN FOR SMALL REFINERS.—A
21 small refinery shall be subject to the require-
22 ments of this section if it notifies the Adminis-
23 trator that it waives the exemption under sub-
24 paragraph (A).”.

1 (b) PENALTIES AND ENFORCEMENT.—Section
2 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is
3 amended—

4 (1) in paragraph (1)—

5 (A) in the first sentence, by striking “or
6 (n)” each place it appears and inserting “(n) or
7 (o)”; and

8 (B) in the second sentence, by striking “or
9 (m)” and inserting “(m), or (o)”; and

10 (2) in the first sentence of paragraph (2), by
11 striking “and (n)” each place it appears and insert-
12 ing “(n), and (o)”.

13 (c) SURVEY OF RENEWABLE FUEL MARKET.—

14 (1) SURVEY AND REPORT.—Not later than De-
15 cember 1, 2006, and annually thereafter, the Admin-
16 istrator of the Environmental Protection Agency (in
17 consultation with the Secretary of Energy acting
18 through the Administrator of the Energy Informa-
19 tion Administration) shall—

20 (A) conduct, with respect to each conven-
21 tional gasoline use area and each reformulated
22 gasoline use area in each State, a survey to de-
23 termine the market shares of—

24 (i) conventional gasoline containing
25 ethanol;

1 (ii) reformulated gasoline containing
2 ethanol;

3 (iii) conventional gasoline containing
4 renewable fuel; and

5 (iv) reformulated gasoline containing
6 renewable fuel; and

7 (B) submit to Congress, and make publicly
8 available, a report on the results of the survey
9 under subparagraph (A).

10 (2) RECORDKEEPING AND REPORTING RE-
11 QUIREMENTS.—The Administrator may require any
12 refiner, blender, or importer to keep such records
13 and make such reports as are necessary to ensure
14 that the survey conducted under paragraph (1) is
15 accurate. The Administrator shall rely, to the extent
16 practicable, on existing reporting and recordkeeping
17 requirements to avoid duplicative requirements.

18 (3) APPLICABLE LAW.—Activities carried out
19 under this subsection shall be conducted in a man-
20 ner designed to protect confidentiality of individual
21 responses.

22 (4) CALCULATION OF MARKET SHARES.—Mar-
23 ket shares for conventional gasoline and reformu-
24 lated gasoline use areas will be calculated on a state-
25 wide basis using information collected under para-

1 graph (2) and other information available to the Ad-
2 ministrator. Market share information may be based
3 upon gasoline distribution patterns that include
4 multistate use areas.

5 **SEC. 17102. FUELS SAFE HARBOR.**

6 (a) IN GENERAL.—Notwithstanding any other provi-
7 sion of Federal or State law, no renewable fuel, as defined
8 by section 211(o)(1) of the Clean Air Act, or fuel con-
9 taining MTBE, used or intended to be used as a motor
10 vehicle fuel, nor any motor vehicle fuel containing such
11 renewable fuel or MTBE, shall be deemed defective in de-
12 sign or manufacture by virtue of the fact that it is, or
13 contains, such a renewable fuel or MTBE, if it does not
14 violate a control or prohibition imposed by the Adminis-
15 trator under section 211 of such Act, and the manufac-
16 turer is in compliance with all requests for information
17 under subsection (b) of such section 211(b) of the Clean
18 Air Act. If the safe harbor provided by this section does
19 not apply, the existence of a design defect or manufac-
20 turing defect shall be determined under otherwise applica-
21 ble law. Nothing in this paragraph shall be construed to
22 affect the liability of any person for environmental remedi-
23 ation costs, drinking water contamination, negligence,
24 public nuisance or any other liability other than liability

1 for a defect in design or manufacture of a motor vehicle
2 fuel.

3 (b) EFFECTIVE DATE.—This section shall be effec-
4 tive as of the date of enactment and shall apply with re-
5 spect to all claims filed on or after that date.

6 **SEC. 17103. FINDINGS AND MTBE TRANSITION ASSISTANCE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) since 1979, methyl tertiary butyl ether (re-
9 ferred to in this section as “MTBE”) has been used
10 nationwide at low levels in gasoline to replace lead
11 as an octane booster or anti-knocking agent;

12 (2) Public Law 101–549 (commonly known as
13 the “Clean Air Act Amendments of 1990”) (42
14 U.S.C. 7401 et seq.) established a fuel oxygenate
15 standard under which reformulated gasoline must
16 contain at least 2 percent oxygen by weight;

17 (3) at the time of the adoption of the fuel oxy-
18 gen standard, Congress was aware that significant
19 use of MTBE would result from the adoption of that
20 standard, and that the use of MTBE would likely be
21 important to the cost-effective implementation of
22 that program;

23 (4) Congress was aware that gasoline and its
24 component additives can and do leak from storage
25 tanks;

1 (5) the fuel industry responded to the fuel oxy-
2 genate standard established by Public Law 101–549
3 by making substantial investments in—

4 (A) MTBE production capacity; and

5 (B) systems to deliver MTBE-containing
6 gasoline to the marketplace;

7 (6) Congress has—

8 (A) reconsidered the relative value of the
9 oxygenate requirement for reformulated gaso-
10 line; and

11 (B) decided to provide for the elimination
12 of the oxygenate requirement for reformulated
13 gasoline and to provide for a renewable content
14 requirement for motor fuel; and

15 (7) it is appropriate for Congress to provide
16 some limited transition assistance—

17 (A) to merchant producers of MTBE who
18 produced MTBE in response to a market cre-
19 ated by the oxygenate requirement contained in
20 the Clean Air Act; and

21 (B) for the purpose of mitigating any fuel
22 supply problems that may result from the elimi-
23 nation of the oxygenate requirement for refor-
24 mulated gasoline.

1 (b) PURPOSES.—The purpose of this section is to
2 provide assistance to merchant producers of MTBE in
3 making the transition from producing MTBE to producing
4 other fuel additives.

5 (c) MTBE MERCHANT PRODUCER CONVERSION AS-
6 SISTANCE.—Section 211(c) of the Clean Air Act (42
7 U.S.C. 7545(c)) is amended by adding at the end the fol-
8 lowing:

9 “(5) MTBE MERCHANT PRODUCER CONVER-
10 SION ASSISTANCE.—

11 “(A) IN GENERAL.—

12 “(i) GRANTS.—The Secretary of En-
13 ergy, in consultation with the Adminis-
14 trator, may make grants to merchant pro-
15 ducers of methyl tertiary butyl ether in the
16 United States to assist the producers in
17 the conversion of eligible production facili-
18 ties described in subparagraph (C) to the
19 production of iso-octane and alkylates.

20 “(ii) DETERMINATION.—The Admin-
21 istrator, in consultation with the Secretary
22 of Energy, may determine that transition
23 assistance for the production of iso-octane
24 and alkylates is inconsistent with the pro-
25 visions of subparagraph (B) and, on that

1 basis, may deny applications for grants au-
2 thorized by this provision.

3 “(B) FURTHER GRANTS.—The Secretary
4 of Energy, in consultation with the Adminis-
5 trator, may also further make grants to mer-
6 chant producers of MTBE in the United States
7 to assist the producers in the conversion of eli-
8 gible production facilities described in subpara-
9 graph (C) to the production of such other fuel
10 additives that, consistent with this subsection—

11 “(i) unless the Administrator deter-
12 mines that such fuel additives may reason-
13 ably be anticipated to endanger public
14 health or the environment;

15 “(ii) have been registered and have
16 been tested or are being tested in accord-
17 ance with the requirements of this section;
18 and

19 “(iii) will contribute to replacing gaso-
20 line volumes lost as a result of paragraph
21 (5).

22 “(C) ELIGIBLE PRODUCTION FACILI-
23 TIES.—A production facility shall be eligible to
24 receive a grant under this paragraph if the pro-
25 duction facility—

1 “(i) is located in the United States;
2 and

3 “(ii) produced methyl tertiary butyl
4 ether for consumption before April 1, 2003
5 and ceased production at any time after
6 the date of enactment.

7 “(D) AUTHORIZATION OF APPROPRIA-
8 TIONS.—There is authorized to be appropriated
9 to carry out this paragraph \$250,000,000 for
10 each of fiscal years 2004 through 2006, to re-
11 main available until expended.”.

12 (d) EFFECT ON STATE LAW.—The amendments
13 made to the Clean Air Act by this title have no effect re-
14 garding any available authority of States to limit the use
15 of methyl tertiary butyl ether in motor vehicle fuel.

16 **SEC. 17104. ELIMINATION OF OXYGEN CONTENT REQUIRE-**
17 **MENT FOR REFORMULATED GASOLINE.**

18 (a) ELIMINATION.—

19 (1) IN GENERAL.—Section 211(k) of the Clean
20 Air Act (42 U.S.C. 7545(k)) is amended—

21 (A) in paragraph (2)—

22 (i) in the second sentence of subpara-
23 graph (A), by striking “(including the oxy-
24 gen content requirement contained in sub-
25 paragraph (B))”;

1 (ii) by striking subparagraph (B); and
2 (iii) by redesignating subparagraphs
3 (C) and (D) as subparagraphs (B) and
4 (C), respectively;

5 (B) in paragraph (3)(A), by striking clause
6 (v);

7 (C) in paragraph (7)—

8 (i) in subparagraph (A)—

9 (I) by striking clause (i); and

10 (II) by redesignating clauses (ii)
11 and (iii) as clauses (i) and (ii), respec-
12 tively; and

13 (ii) in subparagraph (C)—

14 (I) by striking clause (ii); and

15 (II) by redesignating clause (iii)
16 as clause (ii); and

17 (2) EFFECTIVE DATE.—The amendments made
18 by paragraph (1) take effect 270 days after the date
19 of enactment of this Act, except that such amend-
20 ments shall take effect upon enactment in any State
21 that has received a waiver under section 209(b) of
22 the Clean Air Act.

23 (b) MAINTENANCE OF TOXIC AIR POLLUTANT EMIS-
24 SION REDUCTIONS.—Section 211(k)(1) of the Clean Air
25 Act (42 U.S.C. 7545(k)(1)) is amended—

1 (1) by striking “Within 1 year after the enact-
2 ment of the Clean Air Act Amendments of 1990,”
3 and inserting the following:

4 “(A) IN GENERAL.—Not later than No-
5 vember 15, 1991,”; and

6 (2) by adding at the end the following:

7 “(B) MAINTENANCE OF TOXIC AIR POL-
8 LUTANT EMISSIONS REDUCTIONS FROM REFOR-
9 MULATED GASOLINE.—

10 “(i) DEFINITIONS.—In this subpara-
11 graph the term ‘PADD’ means a Petro-
12 leum Administration for Defense District.

13 “(ii) REGULATIONS REGARDING EMIS-
14 SIONS OF TOXIC AIR POLLUTANTS.—Not
15 later than 270 days after the date of en-
16 actment of this subparagraph the Adminis-
17 trator shall establish, for each refinery or
18 importer, standards for toxic air pollutants
19 from use of the reformulated gasoline pro-
20 duced or distributed by the refinery or im-
21 porter that maintain the reduction of the
22 average annual aggregate emissions of
23 toxic air pollutants for reformulated gaso-
24 line produced or distributed by the refinery
25 or importer during calendar years 1999

1 and 2000, determined on the basis of data
2 collected by the Administrator with respect
3 to the refinery or importer.

4 “(iii) STANDARDS APPLICABLE TO
5 SPECIFIC REFINERIES OR IMPORTERS.—

6 “(I) APPLICABILITY OF STAND-
7 ARDS.—For any calendar year, the
8 standards applicable to a refinery or
9 importer under clause (ii) shall apply
10 to the quantity of gasoline produced
11 or distributed by the refinery or im-
12 porter in the calendar year only to the
13 extent that the quantity is less than
14 or equal to the average annual quan-
15 tity of reformulated gasoline produced
16 or distributed by the refinery or im-
17 porter during calendar years 1999
18 and 2000.

19 “(II) APPLICABILITY OF OTHER
20 STANDARDS.—For any calendar year,
21 the quantity of gasoline produced or
22 distributed by a refinery or importer
23 that is in excess of the quantity sub-
24 ject to subclause (I) shall be subject
25 to standards for toxic air pollutants

1 promulgated under subparagraph (A)
2 and paragraph (3)(B).

3 “(iv) CREDIT PROGRAM.—The Admin-
4 istrator shall provide for the granting and
5 use of credits for emissions of toxic air pol-
6 lutants in the same manner as provided in
7 paragraph (7).

8 “(v) REGIONAL PROTECTION OF
9 TOXICS REDUCTION BASELINES.—

10 “(I) IN GENERAL.—Not later
11 than 60 days after the date of enact-
12 ment of this subparagraph, and not
13 later than April 1 of each calendar
14 year that begins after that date of en-
15 actment, the Administrator shall pub-
16 lish in the Federal Register a report
17 that specifies, with respect to the pre-
18 vious calendar year—

19 “(aa) the quantity of refor-
20 mulated gasoline produced that is
21 in excess of the average annual
22 quantity of reformulated gasoline
23 produced in 1999 and 2000; and

24 “(bb) the reduction of the
25 average annual aggregate emis-

sions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

“(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 1999 and 2000, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

“(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

1 “(bb) promulgate revisions
2 to the regulations promulgated
3 under clause (ii), to take effect
4 not earlier than 180 days but not
5 later than 270 days after the
6 date of promulgation, to provide
7 that, notwithstanding clause
8 (iii)(II), all reformulated gasoline
9 produced or distributed at each
10 refinery or importer shall meet
11 the standards applicable under
12 clause (ii) not later than April 1
13 of the year following the report
14 in subclause (II) and for subse-
15 quent years.

16 “(vi) REGULATIONS TO CONTROL
17 HAZARDOUS AIR POLLUTANTS FROM
18 MOTOR VEHICLES AND MOTOR VEHICLE
19 FUELS.—Not later than July 1, 2004, the
20 Administrator shall promulgate final regu-
21 lations to control hazardous air pollutants
22 from motor vehicles and motor vehicle
23 fuels, as provided for in section 80.1045 of
24 title 40, Code of Federal Regulations (as

1 in effect on the date of enactment of this
2 subparagraph).”.

3 (c) CONSOLIDATION IN REFORMULATED GASOLINE
4 REGULATIONS.—Not later than 180 days after the date
5 of enactment of this Act, the Administrator shall revise
6 the reformulated gasoline regulations under subpart D of
7 part 80 of title 40, Code of Federal Regulations, to con-
8 solidate the regulations applicable to VOC-Control Re-
9 gions 1 and 2 under section 80.41 of that title by elimi-
10 nating the less stringent requirements applicable to gaso-
11 line designated for VOC-Control Region 2 and instead ap-
12 plying the more stringent requirements applicable to gaso-
13 line designated for VOC-Control Region 1.

14 (d) SAVINGS CLAUSE.—Nothing in this section is in-
15 tended to affect or prejudice either any legal claims or ac-
16 tions with respect to regulations promulgated by the Ad-
17 ministrator prior to enactment of this Act regarding emis-
18 sions of toxic air pollutants from motor vehicles or the
19 adjustment of standards applicable to a specific refinery
20 or importer made under such prior regulations and the
21 Administrator may apply such adjustments to the stand-
22 ards applicable to such refinery or importer under clause
23 (iii)(I) of section 211(k)(1)(B) of the Clean Air Act, ex-
24 cept that—

1 (1) the Administrator shall revise such adjust-
2 ments to be based only on calendar years 1999–
3 2000, and

4 (2) for adjustments based on toxic air pollutant
5 emissions from reformulated gasoline significantly
6 below the national annual average emissions of toxic
7 air pollutants from all reformulated gasoline, the
8 Administrator may revise such adjustments to take
9 account of the scope of any lawful and enforceable
10 Federal or State prohibition on methyl tertiary butyl
11 ether imposed after the effective date of the enact-
12 ment of this paragraph, except that any such adjust-
13 ment shall require such refiner or importer, to the
14 greatest extent practicable, to maintain the reduc-
15 tion achieved during calendar year 1999–2000 in the
16 average annual aggregate emissions of toxic air pol-
17 lutants from reformulated gasoline produced or dis-
18 tributed by the refinery or importer. Any such ad-
19 justment shall not be made at a level below the aver-
20 age percentage of reductions of emissions of toxic air
21 pollutants for reformulated gasoline supplied to
22 PADD I during calendar years 1999–2000.

23 **SEC. 17105. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

24 Section 211 of the Clean Air Act (42 U.S.C. 7545)
25 is amended by inserting after subsection (o) the following:

1 “(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES
2 AND EMISSIONS MODEL.—

3 “(1) ANTI-BACKSLIDING ANALYSIS.—

4 “(A) DRAFT ANALYSIS.—Not later than 4
5 years after the date of enactment of this para-
6 graph, the Administrator shall publish for pub-
7 lic comment a draft analysis of the changes in
8 emissions of air pollutants and air quality due
9 to the use of motor vehicle fuel and fuel addi-
10 tives resulting from implementation of the
11 amendments made by title VII of the Energy
12 Policy Act of 2003.

13 “(B) FINAL ANALYSIS.—After providing a
14 reasonable opportunity for comment but not
15 later than 5 years after the date of enactment
16 of this paragraph, the Administrator shall pub-
17 lish the analysis in final form.

18 “(2) EMISSIONS MODEL.—For the purposes of
19 this subsection, as soon as the necessary data are
20 available, the Administrator shall develop and final-
21 ize an emissions model that reasonably reflects the
22 effects of gasoline characteristics or components on
23 emissions from vehicles in the motor vehicle fleet
24 during calendar year 2005.”.

1 **SEC. 17106. DATA COLLECTION.**

2 Section 205 of the Department of Energy Organiza-
3 tion Act (42 U.S.C. 7135) is amended by adding at the
4 end the following:

5 “(m) RENEWABLE FUELS SURVEY.—(1) In order to
6 improve the ability to evaluate the effectiveness of the Na-
7 tion’s renewable fuels mandate, the Administrator shall
8 conduct and publish the results of a survey of renewable
9 fuels demand in the motor vehicle fuels market in the
10 United States monthly, and in a manner designed to pro-
11 tect the confidentiality of individual responses. In con-
12 ducting the survey, the Administrator shall collect infor-
13 mation both on a national and regional basis, including—

14 “(A) the quantity of renewable fuels produced;

15 “(B) the quantity of renewable fuels blended;

16 “(C) the quantity of renewable fuels imported;

17 “(D) the quantity of renewable fuels demanded;

18 “(E) market price data; and

19 “(F) such other analyses or evaluations as the
20 Administrator finds is necessary to achieve the pur-
21 poses of this section.

22 “(2) The Administrator shall also collect or estimate
23 information both on a national and regional basis, pursu-
24 ant to subparagraphs (A) through (F) of paragraph (1),
25 for the five years prior to implementation of this sub-
26 section.

1 “(3) This subsection does not affect the authority of
2 the Administrator to collect data under section 52 of the
3 Federal Energy Administration Act of 1974 (15 U.S.C.
4 790a).”.

5 **SEC. 17107. FUEL SYSTEM REQUIREMENTS HARMONI-**
6 **ZATION STUDY.**

7 (a) STUDY.—

8 (1) IN GENERAL.—The Administrator of the
9 Environmental Protection Agency and the Secretary
10 of Energy shall jointly conduct a study of Federal,
11 State, and local requirements concerning motor vehi-
12 cle fuels, including—

13 (A) requirements relating to reformulated
14 gasoline, volatility (measured in Reid vapor
15 pressure), oxygenated fuel, and diesel fuel; and

16 (B) other requirements that vary from
17 State to State, region to region, or locality to
18 locality.

19 (2) REQUIRED ELEMENTS.—The study shall as-
20 sess—

21 (A) the effect of the variety of require-
22 ments described in paragraph (1) on the supply,
23 quality, and price of motor vehicle fuels avail-
24 able to consumers in various States and local-
25 ities;

1 (B) the effect of the requirements de-
2 scribed in paragraph (1) on achievement of—

3 (i) national, regional, and local air
4 quality standards and goals; and

5 (ii) related environmental and public
6 health protection standards and goals;

7 (C) the effect of Federal, State, and local
8 motor vehicle fuel regulations, including mul-
9 tiple motor vehicle fuel requirements, on—

10 (i) domestic refineries;

11 (ii) the fuel distribution system; and

12 (iii) industry investment in new capac-
13 ity;

14 (D) the effect of the requirements de-
15 scribed in paragraph (1) on emissions from ve-
16 hicles, refineries, and fuel handling facilities;

17 (E) the feasibility of developing national or
18 regional motor vehicle fuel slates for the 48
19 contiguous States that, while improving air
20 quality at the national, regional and local levels
21 consistent with the attainment of national am-
22 bient air quality standards, could—

23 (i) enhance flexibility in the fuel dis-
24 tribution infrastructure and improve fuel
25 fungibility;

1 (ii) reduce price volatility and costs to
2 consumers and producers;

3 (iii) provide increased liquidity to the
4 gasoline market; and

5 (iv) enhance fuel quality, consistency,
6 and supply;

7 (F) the feasibility of providing incentives,
8 to promote cleaner burning motor vehicle fuel;
9 and

10 (G) the extent to which improvements in
11 air quality and any increases or decreases in
12 the price of motor fuel can be projected to re-
13 sult from the Environmental Protection Agen-
14 cy's Tier II requirements for conventional gaso-
15 line and vehicle emission systems, the reformu-
16 lated gasoline program, the renewable content
17 requirements established by this subtitle, State
18 programs regarding gasoline volatility, and any
19 other requirements imposed by States or local-
20 ities affecting the composition of motor fuel.

21 (b) REPORT.—

22 (1) IN GENERAL.—Not later than December 31,
23 2006, the Administrator of the Environmental Pro-
24 tection Agency and the Secretary of Energy shall

1 submit to Congress a report on the results of the
2 study conducted under subsection (a).

3 (2) RECOMMENDATIONS.—

4 (A) IN GENERAL.—The report shall con-
5 tain recommendations for legislative and admin-
6 istrative actions that may be taken—

7 (i) to improve air quality;

8 (ii) to reduce costs to consumers and
9 producers; and

10 (iii) to increase supply liquidity.

11 (B) REQUIRED CONSIDERATIONS.—The
12 recommendations under subparagraph (A) shall
13 take into account the need to provide advance
14 notice of required modifications to refinery and
15 fuel distribution systems in order to ensure an
16 adequate supply of motor vehicle fuel in all
17 States.

18 (3) CONSULTATION.—In developing the report,
19 the Administrator of the Environmental Protection
20 Agency and the Secretary of Energy shall consult
21 with—

22 (A) the Governors of the States;

23 (B) automobile manufacturers;

24 (C) motor vehicle fuel producers and dis-
25 tributors; and

1 (D) the public.

2 **SEC. 17107A. REDUCING THE PROLIFERATION BOUTIQUE**
3 **FUELS.**

4 (a) EPA APPROVAL OF STATE PLANS WITH BOU-
5 TIQUE FUELS.—Section 211(c)(4) of the Clean Air Act
6 (42 U.S.C. 7545(c)(4)) is amended by adding the fol-
7 lowing at the end thereof:

8 “(D) In the case of gasoline, after the enactment of
9 this subparagraph, the Administrator shall give a pref-
10 erence to the approval of implementation plan provisions
11 described in subparagraph (C) if the control or prohibition
12 in such provisions requires the use of either of the fol-
13 lowing:

14 “(i) Federal clean burning fuel meeting the re-
15 quirements of subsection (p)(1).

16 “(ii) Low RVP gasoline meeting the require-
17 ments of subsection (p)(2).”.

18 (b) PREFERRED GASOLINE OPTIONS.—Section 211
19 of the Clean Air Act (42 U.S.C. 7545) is amended by add-
20 ing the following new subsection at the end thereof:

21 “(r) PREFERRED GASOLINE OPTIONS.—

22 “(1) FEDERAL CLEAN BURNING GASOLINE.—
23 For purposes of this section, the term ‘Federal clean
24 burning gasoline’ means reformulated gasoline as de-
25 fined in subsection (k), the Reid Vapor Pressure of

1 which is equal to 6.8 pounds per square inch (psi)
2 for the high ozone season (as determined by the Ad-
3 ministrator).

4 “(2) LOW RVP GASOLINE.—The Administrator
5 shall promulgate regulations providing for a gasoline
6 blend for the high ozone season (as determined by
7 the Administrator) having a Reid Vapor Pressure of
8 7.8 pounds per square inch (psi).”.

9 **SEC. 17108. COMMERCIAL BYPRODUCTS FROM MUNICIPAL**
10 **SOLID WASTE LOAN GUARANTEE PROGRAM.**

11 (a) DEFINITION OF MUNICIPAL SOLID WASTE.—In
12 this section, the term “municipal solid waste” has the
13 meaning given the term “solid waste” in section 1004 of
14 the Solid Waste Disposal Act (42 U.S.C. 6903).

15 (b) ESTABLISHMENT OF PROGRAM.—The Secretary
16 of Energy shall establish a program to provide guarantees
17 of loans by private institutions for the construction of fa-
18 cilities for the processing and conversion of municipal solid
19 waste into fuel ethanol and other commercial byproducts.

20 (c) REQUIREMENTS.—The Secretary may provide a
21 loan guarantee under subsection (b) to an applicant if—

22 (1) without a loan guarantee, credit is not
23 available to the applicant under reasonable terms or
24 conditions sufficient to finance the construction of a
25 facility described in subsection (b);

1 (2) the prospective earning power of the appli-
2 cant and the character and value of the security
3 pledged provide a reasonable assurance of repayment
4 of the loan to be guaranteed in accordance with the
5 terms of the loan; and

6 (3) the loan bears interest at a rate determined
7 by the Secretary to be reasonable, taking into ac-
8 count the current average yield on outstanding obli-
9 gations of the United States with remaining periods
10 of maturity comparable to the maturity of the loan.

11 (d) CRITERIA.—In selecting recipients of loan guar-
12 antees from among applicants, the Secretary shall give
13 preference to proposals that—

14 (1) meet all applicable Federal and State per-
15 mitting requirements;

16 (2) are most likely to be successful; and

17 (3) are located in local markets that have the
18 greatest need for the facility because of—

19 (A) the limited availability of land for
20 waste disposal; or

21 (B) a high level of demand for fuel ethanol
22 or other commercial byproducts of the facility.

23 (e) MATURITY.—A loan guaranteed under subsection
24 (b) shall have a maturity of not more than 20 years.

1 (f) TERMS AND CONDITIONS.—The loan agreement
2 for a loan guaranteed under subsection (b) shall provide
3 that no provision of the loan agreement may be amended
4 or waived without the consent of the Secretary.

5 (g) ASSURANCE OF REPAYMENT.—The Secretary
6 shall require that an applicant for a loan guarantee under
7 subsection (b) provide an assurance of repayment in the
8 form of a performance bond, insurance, collateral, or other
9 means acceptable to the Secretary in an amount equal to
10 not less than 20 percent of the amount of the loan.

11 (h) GUARANTEE FEE.—The recipient of a loan guar-
12 antee under subsection (b) shall pay the Secretary an
13 amount determined by the Secretary to be sufficient to
14 cover the administrative costs of the Secretary relating to
15 the loan guarantee.

16 (i) FULL FAITH AND CREDIT.—The full faith and
17 credit of the United States is pledged to the payment of
18 all guarantees made under this section. Any such guar-
19 antee made by the Secretary shall be conclusive evidence
20 of the eligibility of the loan for the guarantee with respect
21 to principal and interest. The validity of the guarantee
22 shall be incontestable in the hands of a holder of the guar-
23 anteed loan.

24 (j) REPORTS.—Until each guaranteed loan under this
25 section has been repaid in full, the Secretary shall annu-

1 ally submit to Congress a report on the activities of the
2 Secretary under this section.

3 (k) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as are nec-
5 essary to carry out this section.

6 (l) TERMINATION OF AUTHORITY.—The authority of
7 the Secretary to issue a loan guarantee under subsection
8 (b) terminates on the date that is 10 years after the date
9 of enactment of this Act.

10 **Subtitle B—MTBE Cleanup**

11 **SEC. 17201. FUNDING FOR MTBE CONTAMINATION.**

12 Notwithstanding any other provision of law, there is
13 authorized to be appropriated to the Administrator of the
14 United States Environmental Protection Agency from the
15 Leaking Underground Storage Tank Trust Fund not more
16 than \$850,000,000 to be used for taking such action lim-
17 ited to site assessment (including exposure assessment),
18 corrective action, inspection of underground storage tank
19 systems, and groundwater monitoring as the Adminis-
20 trator deems necessary to protect human health, welfare,
21 and the environment from underground storage tank re-
22 leases of fuel containing fuel oxygenates.

**TITLE VIII—AUTOMOBILE
EFFICIENCY**

**SEC. 18001. AUTHORIZATION OF APPROPRIATIONS FOR IM-
PLEMENTATION AND ENFORCEMENT OF
FUEL ECONOMY STANDARDS.**

In addition to any other funds authorized by law, there are authorized to be appropriated to the National Highway Traffic Safety Administration to implement and enforce average fuel economy standards \$5,000,000 for fiscal years 2004 through 2006.

**SEC. 18002. STUDY OF FEASIBILITY AND EFFECTS OF RE-
DUCING USE OF FUEL FOR AUTOMOBILES.**

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall study the feasibility and effects of reducing by model year 2012, by a significant percentage, the use of fuel for automobiles.

(b) SUBJECTS OF STUDY.—The study under this section shall include—

(1) examination of, and recommendation of alternatives to, the policy under current Federal law of establishing average fuel economy standards for automobiles and requiring each automobile manufac-

1 turer to comply with average fuel economy standards
2 that apply to the automobiles it manufactures;

3 (2) examination of how automobile manufactur-
4 ers could contribute toward achieving the reduction
5 referred to in subsection (a);

6 (3) examination of the potential of fuel cell
7 technology in motor vehicles in order to determine
8 the extent to which such technology may contribute
9 to achieving the reduction referred to in subsection
10 (a); and

11 (4) examination of the effects of the reduction
12 referred to in subsection (a) on—

13 (A) gasoline supplies;

14 (B) the automobile industry, including
15 sales of automobiles manufactured in the
16 United States;

17 (C) motor vehicle safety; and

18 (D) air quality.

19 (c) REPORT.—The Administrator shall submit to the
20 Congress a report on the findings, conclusion, and rec-
21 ommendations of the study under this section by not later
22 than 1 year after the date of the enactment of this Act.

23 **DIVISION B—SCIENCE**

24 **SEC. 20001. PURPOSES.**

25 The purposes of this division are to—

1 (1) contribute to a national energy strategy
2 through an energy research and development pro-
3 gram that supports basic energy research and pro-
4 vides mechanisms to develop, demonstrate, and pro-
5 mote the commercial application of new energy tech-
6 nologies in partnership with industry;

7 (2) protect and strengthen the Nation's econ-
8 omy, standard of living, and national security by re-
9 ducing dependence on imported energy;

10 (3) meet future needs for energy services at the
11 lowest total cost to the Nation, giving balanced and
12 comprehensive consideration to technologies that im-
13 prove the efficiency of energy end uses and that en-
14 hance energy supply;

15 (4) reduce the environmental impacts of energy
16 production, distribution, transportation, and use;

17 (5) help increase domestic production of energy,
18 increase the availability of hydrocarbon reserves, and
19 lower energy prices; and

20 (6) stimulate economic growth and enhance the
21 ability of United States companies to compete in fu-
22 ture markets for advanced energy technologies.

23 **SEC. 20002. GOALS.**

24 (a) IN GENERAL.—In order to achieve the purposes
25 of this division, the Secretary shall conduct a balanced set

1 of programs of energy research, development, demonstra-
2 tion, and commercial application, guided by the following
3 goals:

4 (1) ENERGY EFFICIENCY.—

5 (A) BUILDINGS.—Develop, in partnership
6 with industry, technologies, designs, and pro-
7 duction methods that will enable an average 25
8 percent increase by 2010 in the energy effi-
9 ciency of all new buildings, as compared to a
10 new building in 1996.

11 (B) INDUSTRY.—Develop, in partnership
12 with industry, technologies, designs, and pro-
13 duction methods that will enable the energy in-
14 tensity of the major energy-consuming indus-
15 tries to improve by at least 25 percent by 2010
16 as compared to 1991.

17 (C) VEHICLES.—Develop, in partnership
18 with industry, technologies that will enable—

19 (i) by 2010, mid-sized passenger auto-
20 mobiles with a fuel economy of 80 miles
21 per gallon;

22 (ii) by 2010, light trucks (classes 1
23 and 2a) with a fuel economy of 60 miles
24 per gallon;

1 (iii) by 2010, medium trucks and
 2 buses (classes 2b through 6 and class 8
 3 transit buses) with a fuel economy, in ton-
 4 miles per gallon for trucks and passenger
 5 miles per gallon for buses, that is 3 times
 6 that of year 2000 equivalent vehicles;

7 (iv) by 2010, heavy trucks (classes 7
 8 and 8) with a fuel economy, in ton-miles
 9 per gallon, that is 2 times that of year
 10 2000 equivalent vehicles; and

11 (v) by 2020, meeting the goal of the
 12 President's Hydrogen Initiative.

13 (2) DISTRIBUTED ENERGY AND ELECTRIC EN-
 14 ERGY SYSTEMS.—

15 (A) DISTRIBUTED GENERATION.—Develop,
 16 in partnership with industry, technologies based
 17 on natural gas that achieve electricity gener-
 18 ating efficiencies greater than 40 percent by
 19 2015 for on-site, or distributed, generation
 20 technologies.

21 (B) ELECTRIC ENERGY SYSTEMS AND
 22 STORAGE.—Develop, in partnership with indus-
 23 try—

24 (i) technologies for generators and
 25 transmission, distribution, and storage sys-

1 tems that combine high capacity with high
2 efficiency (particularly for electric trans-
3 mission facilities in rural and remote
4 areas);

5 (ii) new transmission and distribution
6 technologies, including flexible alternating
7 current transmission systems, composite
8 conductor materials, advanced protection
9 devices, and controllers;

10 (iii) technologies for interconnection
11 of distributed energy resources with elec-
12 tric power systems;

13 (iv) high-temperature superconducting
14 materials for power delivery equipment
15 such as transmission and distribution ca-
16 bles, transformers, and generators; and

17 (v) real-time transmission and dis-
18 tribution system control technologies that
19 provide for continual exchange of informa-
20 tion between generation, transmission, dis-
21 tribution, and end-user facilities.

22 (3) RENEWABLE ENERGY.—

23 (A) WIND POWER.—Develop, in partner-
24 ship with industry, technologies and designs
25 that will—

- 1 (i) reduce the cost of wind power by
2 40 percent by 2012 as compared to 2000;
3 and
4 (ii) expand utilization of class 3 and 4
5 winds.

6 (B) PHOTOVOLTAICS.—Develop, in part-
7 nership with industry, total photovoltaic sys-
8 tems with installed costs of \$5,000 per peak kil-
9 owatt by 2005 and \$2000 per peak kilowatt by
10 2015.

11 (C) SOLAR THERMAL SYSTEMS.—Develop,
12 in partnership with industry, solar power tech-
13 nologies (including baseload solar power) that
14 combine high-efficiency and high-temperature
15 receivers with advanced thermal storage and
16 power cycles to accommodate peak loads and
17 reduce lifecycle costs.

18 (D) GEOTHERMAL ENERGY.—Develop, in
19 partnership with industry, technologies and
20 processes based on advanced hydrothermal sys-
21 tems and advanced heat and power systems, in-
22 cluding geothermal or ground source heat pump
23 technology, with a specific focus on—

- 24 (i) improving exploration and charac-
25 terization technology to increase the prob-

1 ability of drilling successful wells from 20
2 percent to 40 percent by 2010;

3 (ii) reducing the cost of drilling by
4 2008 to an average cost of \$225 per foot;

5 (iii) developing enhanced geothermal
6 systems technology with the potential to
7 double the usable geothermal resource
8 base, as compared to the date of enact-
9 ment of this Act; and

10 (iv) reducing the cost of installing the
11 ground loop of ground-source heat pumps
12 by 30 percent by 2007 compared to the
13 cost in 2000.

14 (E) BIOMASS-BASED POWER SYSTEMS.—

15 Develop, in partnership with industry, inte-
16 grated power generating systems, advanced con-
17 version, and feedstock technologies capable of
18 producing electric power that is cost-competitive
19 with fossil-fuel generated electricity by 2010,
20 through co-production of fuels, chemicals, and
21 other products under subparagraph (F).

22 (F) BIOFUELS.—Develop, in partnership
23 with industry, new and emerging technologies
24 and biotechnology processes capable of mak-
25 ing—

1 (i) gaseous and liquid biofuels that
2 are price-competitive, by 2010, with gaso-
3 line or diesel in either internal combustion
4 engines or fuel cells; and

5 (ii) biofuels, biobased polymers, and
6 chemicals, including those derived from
7 lignocellulosic feedstock, with particular
8 emphasis on developing biorefineries that
9 use enzyme-based processing systems.

10 (G) HYDROPOWER.—Develop, in partner-
11 ship with industry, a new generation of turbine
12 technologies that will increase generating capac-
13 ity and be less damaging to fish and aquatic
14 ecosystems.

15 (4) FOSSIL ENERGY.—

16 (A) POWER GENERATION.—Develop, in
17 partnership with industry, technologies, includ-
18 ing precombustion technologies, by 2015 with
19 the capability of realizing—

20 (i) electricity generating efficiencies of
21 75 percent (lower heating value) for nat-
22 ural gas; and

23 (ii) widespread commercial application
24 of combined heat and power with thermal

1 efficiencies of more than 85 percent (high-
2 er heating value).

3 (B) OFFSHORE OIL AND GAS RE-
4 SOURCES.—Develop, in partnership with indus-
5 try, technologies to—

6 (i) extract methane hydrates in coast-
7 al waters of the United States; and

8 (ii) develop natural gas and oil re-
9 serves in the ultra-deepwater of the Cen-
10 tral and Western Gulf of Mexico, with a
11 focus on improving, while lowering costs
12 and reducing environmental impacts, the
13 safety and efficiency of—

14 (I) the recovery of ultra-deep-
15 water resources; and

16 (II) sub-sea production tech-
17 nology used for such recovery.

18 (C) ONSHORE OIL AND GAS RESOURCES.—
19 Advance the science and technology available to
20 domestic onshore petroleum producers, particu-
21 larly independent producers of oil or gas,
22 through—

23 (i) advances in technology for explo-
24 ration and production of domestic petro-

1 leum resources, particularly those not ac-
2 cessible with current technology;

3 (ii) improvement in the ability to ex-
4 tract hydrocarbons (including heavy oil)
5 from known reservoirs and classes of res-
6 ervoirs; and

7 (iii) development of technologies and
8 practices that reduce the impact on the en-
9 vironment from petroleum exploration and
10 production.

11 (D) TRANSPORTATION FUELS.—Increase
12 the availability of transportation fuels by focus-
13 ing research on—

14 (i) reducing the cost of producing
15 transportation fuels from coal and natural
16 gas; and

17 (ii) indirect liquefaction of coal and
18 biomass.

19 (5) NUCLEAR ENERGY.—

20 (A) EXISTING REACTORS.—Support re-
21 search to extend the lifetimes of existing United
22 States nuclear power reactors, and increase
23 their reliability while optimizing their current
24 operations for greater efficiencies.

1 (B) ADVANCED REACTORS.—Develop, in
2 partnership with industry—

3 (i) advanced, efficient, lower cost, and
4 passively safe reactor designs;

5 (ii) proliferation-resistant and high-
6 burn-up nuclear fuels; and

7 (iii) technologies to minimize genera-
8 tion of radioactive materials and improve
9 the management of nuclear waste.

10 (C) NUCLEAR SCIENTISTS AND ENGI-
11 NEERS.—Attract new students and faculty to
12 the nuclear sciences, nuclear engineering, and
13 related fields (including health physics, nuclear
14 medicine, nuclear chemistry, and
15 radiochemistry).

16 (6) HYDROGEN.—Carry out programs related
17 to hydrogen in the Fossil Fuel Program and the Nu-
18 clear Energy Program.

19 (b) REVIEW AND ASSESSMENT OF GOALS.—

20 (1) EVALUATION AND MODIFICATION.—Based
21 on amounts appropriated and developments in
22 science and technology, the Secretary shall evaluate
23 the goals set forth in subsection (a) at least once
24 every 5 years, and shall report to the Congress any
25 proposed modifications to the goals.

1 (2) CONSULTATION.—In evaluating and pro-
2 posing modifications to the goals as provided in
3 paragraph (1), the Secretary shall solicit public
4 input.

5 (3) PUBLIC COMMENT.—(A) After consultation
6 under paragraph (2), the Secretary shall publish in
7 the Federal Register a set of draft modifications to
8 the goals for public comment.

9 (B) Not later than 60 days after the date of
10 publication of draft modifications under subpara-
11 graph (A), and after consideration of any public
12 comments received, the Secretary shall publish the
13 final modifications, including a summary of the pub-
14 lic comments received, in the Federal Register.

15 (4) EFFECTIVE DATE.—No modification to
16 goals under this section shall take effect before the
17 date which is 5 years after the date of enactment of
18 this Act.

19 (c) EFFECT OF GOALS.—(1) Nothing in paragraphs
20 (1) through (6) of subsection (a), or any subsequent modi-
21 fication to the goals therein pursuant to subsection (b),
22 shall—

23 (A) create any new—

24 (i) authority for any Federal agency; or

25 (ii) requirement for any other person;

1 (B) be used by a Federal agency to support the
2 establishment of regulatory standards or regulatory
3 requirements; or

4 (C) alter the authority of the Secretary to make
5 grants or other awards.

6 (2) Nothing in this subsection shall be construed to
7 limit the authority of the Secretary to impose conditions
8 on grants or other awards based on the goals in subsection
9 (a) or any subsequent modification thereto.

10 **SEC. 20003. DEFINITIONS.**

11 For purposes of this division:

12 (1) DEPARTMENT.—The term “Department”
13 means the Department of Energy.

14 (2) DEPARTMENTAL MISSION.—The term “de-
15 partmental mission” means any of the functions
16 vested in the Secretary of Energy by the Depart-
17 ment of Energy Organization Act (42 U.S.C. 7101
18 et seq.) or other law.

19 (3) INDEPENDENT PRODUCER OF OIL OR
20 GAS.—

21 (A) IN GENERAL.—The term “independent
22 producer of oil or gas” means any person who
23 produces oil or gas other than a person to
24 whom subsection (c) of section 613A of the In-
25 ternal Revenue Code of 1986 does not apply by

1 reason of paragraph (2) (relating to certain re-
2 tailers) or paragraph (4) (relating to certain re-
3 finers) of section 613A(d) of such Code.

4 (B) RULES FOR APPLYING PARAGRAPHS (2)
5 AND (4) OF SECTION 613A(d).—For purposes of
6 subparagraph (A), paragraphs (2) and (4) of
7 section 613A(d) of the Internal Revenue Code
8 of 1986 shall be applied by substituting “cal-
9 endar year” for “taxable year” each place it ap-
10 pears in such paragraphs.

11 (4) INSTITUTION OF HIGHER EDUCATION.—The
12 term “institution of higher education” has the
13 meaning given that term in section 101(a) of the
14 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

15 (5) JOINT VENTURE.—The term “joint ven-
16 ture” has the meaning given that term under section
17 2 of the National Cooperative Research and Produc-
18 tion Act of 1993 (15 U.S.C. 4301).

19 (6) NATIONAL LABORATORY.—The term “Na-
20 tional Laboratory” means any of the following lab-
21 oratories owned by the Department:

22 (A) Ames National Laboratory.

23 (B) Argonne National Laboratory.

24 (C) Brookhaven National Laboratory.

25 (D) Fermi National Laboratory.

1 (E) Idaho National Engineering and Envi-
2 ronmental Laboratory.

3 (F) Lawrence Berkeley National Labora-
4 tory.

5 (G) Lawrence Livermore National Labora-
6 tory.

7 (H) Los Alamos National Laboratory.

8 (I) National Energy Technology Labora-
9 tory.

10 (J) National Renewable Energy Labora-
11 tory.

12 (K) Oak Ridge National Laboratory.

13 (L) Pacific Northwest National Labora-
14 tory.

15 (M) Princeton Plasma Physics Laboratory.

16 (N) Sandia National Laboratories.

17 (O) Thomas Jefferson National Accel-
18 erator Facility.

19 (7) NONMILITARY ENERGY LABORATORY.—The
20 term “nonmilitary energy laboratory” means any of
21 the following laboratories of the Department:

22 (A) Ames National Laboratory.

23 (B) Argonne National Laboratory.

24 (C) Brookhaven National Laboratory.

25 (D) Fermi National Laboratory.

1 (E) Lawrence Berkeley National Labora-
2 tory.

3 (F) Oak Ridge National Laboratory.

4 (G) Pacific Northwest National Labora-
5 tory.

6 (H) Princeton Plasma Physics Laboratory.

7 (I) Stanford Linear Accelerator Center.

8 (J) Thomas Jefferson National Accelerator
9 Facility.

10 (8) SECRETARY.—The term “Secretary” means
11 the Secretary of Energy.

12 (9) SINGLE-PURPOSE RESEARCH FACILITY.—
13 The term “single-purpose research facility” means
14 any of the following primarily single-purpose entities
15 owned by the Department:

16 (A) East Tennessee Technology Park.

17 (B) Fernald Environmental Management
18 Project.

19 (C) Kansas City Plant.

20 (D) Nevada Test Site.

21 (E) New Brunswick Laboratory.

22 (F) Pantex Weapons Facility.

23 (G) Savannah River Technology Center.

24 (H) Stanford Linear Accelerator Center.

1 (I) Y-12 facility at Oak Ridge National
2 Laboratory.

3 (J) Waste Isolation Pilot Plant.

4 (K) Any other similar organization of the
5 Department designated by the Secretary that
6 engages in technology transfer, partnering, or
7 licensing activities.

8 **TITLE I—RESEARCH AND**
9 **DEVELOPMENT**

10 **Subtitle A—Energy Efficiency**

11 **PART 1—AUTHORIZATION OF APPROPRIATIONS**

12 **SEC. 21101. ENERGY EFFICIENCY.**

13 (a) IN GENERAL.—The following sums are author-
14 ized to be appropriated to the Secretary for energy effi-
15 ciency and conservation research, development, dem-
16 onstration, and commercial application activities, includ-
17 ing activities authorized under this subtitle:

18 (1) For fiscal year 2004, \$616,000,000.

19 (2) For fiscal year 2005, \$695,000,000.

20 (3) For fiscal year 2006, \$772,000,000.

21 (4) For fiscal year 2007, \$865,000,000.

22 (b) ALLOCATIONS.—From amounts authorized under
23 subsection (a), the following sums are authorized:

1 (1) LIGHTING SYSTEMS.—For activities under
2 section 21111, \$50,000,000 for each of fiscal years
3 2004 through 2007.

4 (2) ELECTRIC MOTOR CONTROL TECH-
5 NOLOGY.—For activities under section 21122,
6 \$2,000,000 for each of fiscal years 2004 through
7 2007.

8 (3) SECONDARY ELECTRIC VEHICLE BATTERY
9 USE PROGRAM.—For activities under section
10 21132—

11 (A) for fiscal year 2004, \$4,000,000;

12 (B) for fiscal year 2005, \$7,000,000;

13 (C) for fiscal year 2006, \$7,000,000; and

14 (D) for fiscal year 2007, \$7,000,000.

15 (4) ENERGY EFFICIENCY SCIENCE INITIA-
16 TIVE.—For activities under section 21141—

17 (A) for fiscal year 2004, \$20,000,000;

18 (B) for fiscal year 2005, \$25,000,000;

19 (C) for fiscal year 2006, \$30,000,000; and

20 (D) for fiscal year 2007, \$35,000,000.

21 (c) EXTENDED AUTHORIZATION.—There are author-
22 ized to be appropriated to the Secretary for activities
23 under section 21111, \$50,000,000 for each of fiscal years
24 2008 through 2012.

1 (d) LIMITS ON USE OF FUNDS.—None of the funds
2 authorized to be appropriated under this section may be
3 used for—

4 (1) the promulgation and implementation of en-
5 ergy efficiency regulations;

6 (2) the Weatherization Assistance Program
7 under part A of title IV of the Energy Conservation
8 and Production Act;

9 (3) the State Energy Program under part D of
10 title III of the Energy Policy and Conservation Act;
11 or

12 (4) the Federal Energy Management Program
13 under part 3 of title V of the National Energy Con-
14 servation Policy Act.

15 **PART 2—LIGHTING SYSTEMS**

16 **SEC. 21111. NEXT GENERATION LIGHTING INITIATIVE.**

17 (a) IN GENERAL.—The Secretary shall carry out a
18 Next Generation Lighting Initiative in accordance with
19 this section to support research, development, demonstra-
20 tion, and commercial application activities related to ad-
21 vanced solid-state lighting technologies based on white
22 light emitting diodes.

23 (b) OBJECTIVES.—The objectives of the initiative
24 shall be—

1 (1) to develop, by 2012, advanced solid-state
2 lighting technologies based on white light emitting
3 diodes that, compared to incandescent and fluores-
4 cent lighting technologies, are—

5 (A) longer lasting;

6 (B) more energy-efficient; and

7 (C) cost-competitive;

8 (2) to develop an inorganic white light emitting
9 diode that has an efficiency of 160 lumens per watt
10 and a 10-year lifetime; and

11 (3) to develop an organic white light emitting
12 diode with an efficiency of 100 lumens per watt with
13 a 5-year lifetime that—

14 (A) illuminates over a full color spectrum;

15 (B) covers large areas over flexible sur-
16 faces; and

17 (C) does not contain harmful pollutants,
18 such as mercury, typical of fluorescent lamps.

19 (c) FUNDAMENTAL RESEARCH.—

20 (1) CONSORTIUM.—The Secretary shall carry
21 out the fundamental research activities of the Next
22 Generation Lighting Initiative through a private
23 consortium (which may include private firms, trade
24 associations and institutions of higher education),
25 which the Secretary shall select through a competi-

1 tive process. Each proposed consortium shall submit
2 to the Secretary such information as the Secretary
3 may require, including a program plan agreed to by
4 all participants of the consortium.

5 (2) JOINT VENTURE.—The consortium shall be
6 structured as a joint venture among the participants
7 of the consortium. The Secretary shall serve on the
8 governing council of the consortium.

9 (3) ELIGIBILITY.—To be eligible to be selected
10 as the consortium under paragraph (1), an applicant
11 must be broadly representative of United States
12 solid-state lighting research, development, and man-
13 ufacturing expertise as a whole.

14 (4) GRANTS.—(A) The Secretary shall award
15 grants for fundamental research to the consortium,
16 which the consortium may disburse to researchers,
17 including those who are not participants of the con-
18 sortium.

19 (B) To receive a grant, the consortium must
20 provide a description to the Secretary of the pro-
21 posed research and list the parties that will receive
22 funding.

23 (C) Grants shall be matched by the consortium
24 pursuant to section 21802.

1 (5) NATIONAL LABORATORIES.—National Lab-
2 oratories may participate in the research described
3 in this section, and may receive funds from the con-
4 sortium.

5 (6) INTELLECTUAL PROPERTY.—Participants in
6 the consortium and the Federal Government shall
7 have royalty-free nonexclusive rights to use intellec-
8 tual property derived from research funded pursuant
9 to this subsection.

10 (d) DEVELOPMENT, DEMONSTRATION, AND COM-
11 MERCIAL APPLICATION.—The Secretary shall carry out
12 the development, demonstration, and commercial applica-
13 tion activities of the Next Generation Lighting Initiative
14 through awards to private firms, trade associations, and
15 institutions of higher education. In selecting awardees, the
16 Secretary may give preference to members of the consor-
17 tium selected pursuant to subsection (c).

18 (e) PLANS AND ASSESSMENTS.—(1) The consortium
19 shall formulate an annual operating plan which shall in-
20 clude research priorities, technical milestones, and plans
21 for technology transfer, and which shall be subject to ap-
22 proval by the Secretary.

23 (2) The Secretary shall enter into an arrangement
24 with the National Academy of Sciences to conduct periodic
25 reviews of the Next Generation Lighting Initiative. The

1 Academy shall review the research priorities, technical
2 milestones, and plans for technology transfer established
3 under paragraph (1) and evaluate the progress toward
4 achieving them. The Secretary shall consider the results
5 of such reviews in evaluating the plans submitted under
6 paragraph (1).

7 (f) AUDIT.—The Secretary shall retain an inde-
8 pendent, commercial auditor to perform an audit of the
9 consortium to determine the extent to which the funds au-
10 thorized by this section have been expended in a manner
11 consistent with the purposes of this section. The auditor
12 shall transmit a report annually to the Secretary, who
13 shall transmit the report to the Congress, along with a
14 plan to remedy any deficiencies cited in the report.

15 (g) SUNSET.—The Next Generation Lighting Initia-
16 tive shall terminate no later than September 30, 2013.

17 (h) DEFINITIONS.—As used in this section:

18 (1) ADVANCED SOLID-STATE LIGHTING.—The
19 term “advanced solid-state lighting” means a
20 semiconducting device package and delivery system
21 that produces white light using externally applied
22 voltage.

23 (2) FUNDAMENTAL RESEARCH.—The term
24 “fundamental research” includes basic research on

1 both solid-state materials and manufacturing proc-
2 esses.

3 (3) INORGANIC WHITE LIGHT EMITTING
4 DIODE.—The term “inorganic white light emitting
5 diode” means an inorganic semiconducting package
6 that produces white light using externally applied
7 voltage.

8 (4) ORGANIC WHITE LIGHT EMITTING DIODE.—
9 The term “organic white light emitting diode”
10 means an organic semiconducting compound that
11 produces white light using externally applied voltage.

12 **PART 3—BUILDINGS**

13 **SEC. 21121. NATIONAL BUILDING PERFORMANCE INITIA-**
14 **TIVE.**

15 (a) INTERAGENCY GROUP.—Not later than 3 months
16 after the date of enactment of this Act, the Director of
17 the Office of Science and Technology Policy shall establish
18 an interagency group to develop, in coordination with the
19 advisory committee established under subsection (e), a
20 National Building Performance Initiative (in this section
21 referred to as the “Initiative”). The interagency group
22 shall be cochaired by appropriate officials of the Depart-
23 ment and the Department of Commerce, who shall jointly
24 arrange for the provision of necessary administrative sup-
25 port to the group.

1 (b) INTEGRATION OF EFFORTS.—The Initiative,
2 working with the National Institute of Building Sciences,
3 shall integrate Federal, State, and voluntary private sector
4 efforts to reduce the costs of construction, operation,
5 maintenance, and renovation of commercial, industrial, in-
6 stitutional, and residential buildings.

7 (c) PLAN.—Not later than 1 year after the date of
8 enactment of this Act, the interagency group shall submit
9 to Congress a plan for carrying out the appropriate Fed-
10 eral role in the Initiative. The plan shall be based on whole
11 building principles and shall include—

12 (1) research, development, demonstration, and
13 commercial application of systems and materials for
14 new construction and retrofit relating to the building
15 envelope and building system components; and

16 (2) the collection, analysis, and dissemination of
17 research results and other pertinent information on
18 enhancing building performance to industry, govern-
19 ment entities, and the public.

20 (d) DEPARTMENT OF ENERGY ROLE.—Within the
21 Federal portion of the Initiative, the Department shall be
22 the lead agency for all aspects of building performance re-
23 lated to use and conservation of energy.

24 (e) ADVISORY COMMITTEE.—

1 (1) ESTABLISHMENT.—The Director of the Of-
2 fice of Science and Technology Policy shall establish
3 an advisory committee to—

4 (A) analyze and provide recommendations
5 on potential private sector roles and participa-
6 tion in the Initiative; and

7 (B) review and provide recommendations
8 on the plan described in subsection (c).

9 (2) MEMBERSHIP.—Membership of the advisory
10 committee shall include representatives with a broad
11 range of appropriate expertise, including expertise
12 in—

13 (A) building research and technology;

14 (B) architecture, engineering, and building
15 materials and systems; and

16 (C) the residential, commercial, and indus-
17 trial sectors of the construction industry.

18 (f) CONSTRUCTION.—Nothing in this section provides
19 any Federal agency with new authority to regulate build-
20 ing performance.

21 **SEC. 21122. ELECTRIC MOTOR CONTROL TECHNOLOGY.**

22 The Secretary shall conduct a research, development,
23 demonstration, and commercial application program on
24 advanced control devices to improve the energy efficiency

1 of electric motors used in heating, ventilation, air condi-
2 tioning, and comparable systems.

3 **PART 4—VEHICLES**

4 **SEC. 21131. DEFINITIONS.**

5 For purposes of this part, the term—

6 (1) “battery” means an energy storage device
7 that previously has been used to provide motive
8 power in a vehicle powered in whole or in part by
9 electricity; and

10 (2) “associated equipment” means equipment
11 located where the batteries will be used that is nec-
12 essary to enable the use of the energy stored in the
13 batteries.

14 **SEC. 21132. ESTABLISHMENT OF SECONDARY ELECTRIC VE-**
15 **HICLE BATTERY USE PROGRAM.**

16 (a) PROGRAM.—The Secretary shall establish and
17 conduct a research, development, demonstration, and com-
18 mercial application program for the secondary use of bat-
19 teries. Such program shall be—

20 (1) designed to demonstrate the use of batteries
21 in secondary application, including utility and com-
22 mercial power storage and power quality;

23 (2) structured to evaluate the performance, in-
24 cluding useful service life and costs, of such bat-
25 teries in field operations, and evaluate the necessary

1 supporting infrastructure, including reuse and dis-
2 posal of batteries; and

3 (3) coordinated with ongoing secondary battery
4 use programs at the National Laboratories and in
5 industry.

6 (b) SOLICITATION.—(1) Not later than 6 months
7 after the date of the enactment of this Act, the Secretary
8 shall solicit proposals to demonstrate the secondary use
9 of batteries and associated equipment and supporting in-
10 frastructure in geographic locations throughout the
11 United States. The Secretary may make additional solici-
12 tations for proposals if the Secretary determines that such
13 solicitations are necessary to carry out this section.

14 (2)(A) Proposals submitted in response to a solici-
15 tion under this section shall include—

16 (i) a description of the project, including the
17 batteries to be used in the project, the proposed lo-
18 cations and applications for the batteries, the num-
19 ber of batteries to be demonstrated, and the type,
20 characteristics, and estimated life-cycle costs of the
21 batteries compared to other energy storage devices
22 currently used;

23 (ii) the contribution, if any, of State or local
24 governments and other persons to the demonstration
25 project;

1 (iii) the type of associated equipment and sup-
2 porting infrastructure to be demonstrated; and

3 (iv) any other information the Secretary con-
4 siders appropriate.

5 (B) If the proposal includes a lease arrangement, the
6 proposal shall indicate the terms of such lease arrange-
7 ment for the batteries and associated equipment.

8 (c) SELECTION OF PROPOSALS.—(1)(A) The Sec-
9 retary shall, not later than 3 months after the closing date
10 established by the Secretary for receipt of proposals under
11 subsection (b), select at least 5 proposals to receive finan-
12 cial assistance under this section.

13 (B) No one project selected under this section shall
14 receive more than 25 percent of the funds authorized
15 under this section. No more than 3 projects selected under
16 this section shall demonstrate the same battery type.

17 (2) In selecting a proposal under this section, the
18 Secretary shall consider—

19 (A) the ability of the proposer to acquire the
20 batteries and associated equipment and to success-
21 fully manage and conduct the demonstration project,
22 including satisfying the reporting requirements set
23 forth in paragraph (3)(B);

24 (B) the geographic and climatic diversity of the
25 projects selected;

1 (C) the long-term technical and competitive via-
2 bility of the batteries to be used in the project and
3 of the original manufacturer of such batteries;

4 (D) the suitability of the batteries for their in-
5 tended uses;

6 (E) the technical performance of the batteries,
7 including the expected additional useful life and the
8 batteries' ability to retain energy;

9 (F) the environmental effects of the use of and
10 disposal of the batteries proposed to be used in the
11 project selected;

12 (G) the extent of involvement of State or local
13 government and other persons in the demonstration
14 project and whether such involvement will—

15 (i) permit a reduction of the Federal cost
16 share per project; or

17 (ii) otherwise be used to allow the Federal
18 contribution to be provided to demonstrate a
19 greater number of batteries; and

20 (H) such other criteria as the Secretary con-
21 siders appropriate.

22 (3) CONDITIONS.—The Secretary shall require that—

23 (A) as a part of a demonstration project, the
24 users of the batteries provide to the proposer infor-
25 mation regarding the operation, maintenance, per-

1 formance, and use of the batteries, and the proposer
 2 provide such information to the battery manufac-
 3 turer, for 3 years after the beginning of the dem-
 4 onstration project;

5 (B) the proposer provide to the Secretary such
 6 information regarding the operation, maintenance,
 7 performance, and use of the batteries as the Sec-
 8 retary may request;

9 (C) the proposer provide to the Secretary such
 10 information regarding the disposal of the batteries
 11 as the Secretary may require to ensure that the pro-
 12 poser disposes of the batteries in accordance with
 13 applicable law; and

14 (D) the proposer provide at least 50 percent of
 15 the costs associated with the proposal.

16 **PART 5—ENERGY EFFICIENCY SCIENCE**
 17 **INITIATIVE**

18 **SEC. 21141. ENERGY EFFICIENCY SCIENCE INITIATIVE.**

19 (a) ESTABLISHMENT.—The Secretary shall establish
 20 an Energy Efficiency Science Initiative to be managed by
 21 the Assistant Secretary in the Department with responsi-
 22 bility for energy conservation under section 203(a)(9) of
 23 the Department of Energy Organization Act (42 U.S.C.
 24 7133(a)(9)), in consultation with the Director of the Of-
 25 fice of Science, for grants to be competitively awarded and

1 subject to peer review for research relating to energy effi-
2 ciency.

3 (b) REPORT.—The Secretary shall submit to the Con-
4 gress, along with the President’s annual budget request
5 under section 1105(a) of title 31, United States Code, a
6 report on the activities of the Energy Efficiency Science
7 Initiative, including a description of the process used to
8 award the funds and an explanation of how the research
9 relates to energy efficiency.

10 **PART 6—ADVANCED ENERGY TECHNOLOGY**

11 **TRANSFER CENTERS**

12 **SEC. 21151. ADVANCED ENERGY TECHNOLOGY TRANSFER**
13 **CENTERS.**

14 (a) GRANTS.—Not later than 18 months after the
15 date of the enactment of this Act, the Secretary shall
16 make grants to nonprofit institutions, State and local gov-
17 ernments, or universities (or consortia thereof), to estab-
18 lish a geographically dispersed network of Advanced En-
19 ergy Technology Transfer Centers, to be located in areas
20 the Secretary determines have the greatest need of the
21 services of such Centers.

22 (b) ACTIVITIES.—(1) Each Center shall operate a
23 program to encourage demonstration and commercial ap-
24 plication of advanced energy methods and technologies
25 through education and outreach to building and industrial

1 professionals, and to other individuals and organizations
2 with an interest in efficient energy use.

3 (2) Each Center shall establish an advisory panel to
4 advise the Center on how best to accomplish the activities
5 under paragraph (1).

6 (c) APPLICATION.—A person seeking a grant under
7 this section shall submit to the Secretary an application
8 in such form and containing such information as the Sec-
9 retary may require. The Secretary may award a grant
10 under this section to an entity already in existence if the
11 entity is otherwise eligible under this section.

12 (d) SELECTION CRITERIA.—The Secretary shall
13 award grants under this section on the basis of the fol-
14 lowing criteria, at a minimum:

15 (1) The ability of the applicant to carry out the
16 activities in subsection (b).

17 (2) The extent to which the applicant will co-
18 ordinate the activities of the Center with other enti-
19 ties, such as State and local governments, utilities,
20 and educational and research institutions.

21 (e) MATCHING FUNDS.—The Secretary shall require
22 a non-Federal matching requirement of at least 50 percent
23 of the costs of establishing and operating each Center.

24 (f) ADVISORY COMMITTEE.—The Secretary shall es-
25 tablish an advisory committee to advise the Secretary on

1 the establishment of Centers under this section. The advisory
2 committee shall be composed of individuals with expertise
3 in the area of advanced energy methods and technologies,
4 including at least 1 representative from—

- 5 (1) State or local energy offices;
- 6 (2) energy professionals;
- 7 (3) trade or professional associations;
- 8 (4) architects, engineers, or construction professionals;
- 9 sionals;
- 10 (5) manufacturers;
- 11 (6) the research community; and
- 12 (7) nonprofit energy or environmental organizations.

14 (g) DEFINITIONS.—For purposes of this section—

15 (1) the term “advanced energy methods and
16 technologies” means all methods and technologies
17 that promote energy efficiency and conservation, including
18 distributed generation technologies, and life-cycle analysis
19 of energy use;

20 (2) the term “Center” means an Advanced Energy
21 Technology Transfer Center established pursuant to this
22 section; and

23 (3) the term “distributed generation” means an
24 electric power generation facility that is designed to

1 serve retail electric consumers at or near the facility
2 site.

3 **Subtitle B—Distributed Energy and**
4 **Electric Energy Systems**

5 **PART 1—AUTHORIZATION OF APPROPRIATIONS**

6 **SEC. 21201. DISTRIBUTED ENERGY AND ELECTRIC ENERGY**
7 **SYSTEMS.**

8 (a) IN GENERAL.—The following sums are author-
9 ized to be appropriated to the Secretary for distributed
10 energy and electric energy systems activities, including ac-
11 tivities authorized under this subtitle:

12 (1) For fiscal year 2004, \$190,000,000.

13 (2) For fiscal year 2005, \$200,000,000.

14 (3) For fiscal year 2006, \$220,000,000.

15 (4) For fiscal year 2007, \$240,000,000.

16 (b) MICRO-COGENERATION ENERGY TECH-
17 NOLOGY.—From amounts authorized under subsection
18 (a), the following sums shall be available for activities
19 under section 21213:

20 (1) For fiscal year 2004, \$5,000,000.

21 (2) For fiscal year 2005, \$5,500,000.

22 (3) For fiscal year 2006, \$6,000,000.

23 (4) For fiscal year 2007, \$6,500,000.

PART 2—DISTRIBUTED POWER**SEC. 21211. STRATEGY.**

(a) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop and transmit to the Congress a strategy for a comprehensive research, development, demonstration, and commercial application program to develop hybrid distributed power systems that combine—

(1) one or more renewable electric power generation technologies of 10 megawatts or less located near the site of electric energy use; and

(2) nonintermittent electric power generation technologies suitable for use in a distributed power system.

(b) CONTENTS.—The strategy shall—

(1) identify the needs best met with such hybrid distributed power systems and the technological barriers to the use of such systems;

(2) provide for the development of methods to design, test, integrate into systems, and operate such hybrid distributed power systems;

(3) include, as appropriate, research, development, demonstration, and commercial application on related technologies needed for the adoption of such hybrid distributed power systems, including energy

1 storage devices and environmental control tech-
2 nologies;

3 (4) include research, development, demonstra-
4 tion, and commercial application of interconnection
5 technologies for communications and controls of dis-
6 tributed generation architectures, particularly tech-
7 nologies promoting real-time response to power mar-
8 ket information and physical conditions on the elec-
9 trical grid; and

10 (5) describe how activities under the strategy
11 will be integrated with other research, development,
12 demonstration, and commercial application activities
13 supported by the Department of Energy related to
14 electric power technologies.

15 **SEC. 21212. HIGH POWER DENSITY INDUSTRY PROGRAM.**

16 The Secretary shall establish a comprehensive re-
17 search, development, demonstration, and commercial ap-
18 plication program to improve energy efficiency of high
19 power density facilities, including data centers, server
20 farms, and telecommunications facilities. Such program
21 shall consider technologies that provide significant im-
22 provement in thermal controls, metering, load manage-
23 ment, peak load reduction, or the efficient cooling of elec-
24 tronics.

1 **SEC. 21213. MICRO-COGENERATION ENERGY TECHNOLOGY.**

2 The Secretary shall make competitive, merit-based
3 grants to consortia for the development of micro-cogenera-
4 tion energy technology. The consortia shall explore the use
5 of small-scale combined heat and power in residential
6 heating appliances.

7 **PART 3—TRANSMISSION SYSTEMS**

8 **SEC. 21221. TRANSMISSION INFRASTRUCTURE SYSTEMS RE-**
9 **SEARCH, DEVELOPMENT, DEMONSTRATION,**
10 **AND COMMERCIAL APPLICATION.**

11 (a) PROGRAM AUTHORIZED.—The Secretary shall de-
12 velop and implement a comprehensive research, develop-
13 ment, demonstration, and commercial application program
14 to promote improved reliability and efficiency of electrical
15 transmission systems. Such program may include—

- 16 (1) advanced energy technologies, materials,
17 and systems;
- 18 (2) advanced grid reliability and efficiency tech-
19 nology development;
- 20 (3) technologies contributing to significant load
21 reductions;
- 22 (4) advanced metering, load management, and
23 control technologies;
- 24 (5) technologies to enhance existing grid compo-
25 nents;

1 (6) the development and use of high-tempera-
2 ture superconductors to—

3 (A) enhance the reliability, operational
4 flexibility, or power-carrying capability of elec-
5 tric transmission or distribution systems; or

6 (B) increase the efficiency of electric en-
7 ergy generation, transmission, distribution, or
8 storage systems;

9 (7) integration of power systems, including sys-
10 tems to deliver high-quality electric power, electric
11 power reliability, and combined heat and power;

12 (8) any other infrastructure technologies, as ap-
13 propriate; and

14 (9) technology transfer and education.

15 (b) PROGRAM PLAN.—Not later than 1 year after the
16 date of the enactment of this Act, the Secretary, in con-
17 sultation with other appropriate Federal agencies, shall
18 prepare and transmit to Congress a 5-year program plan
19 to guide activities under this section. In preparing the pro-
20 gram plan, the Secretary shall consult with utilities, en-
21 ergy services providers, manufacturers, institutions of
22 higher education, other appropriate State and local agen-
23 cies, environmental organizations, professional and tech-
24 nical societies, and any other persons the Secretary con-
25 siders appropriate.

1 (c) REPORT.—Not later than 2 years after the trans-
 2 mittal of the plan under subsection (b), the Secretary shall
 3 transmit a report to Congress describing the progress
 4 made under this section and identifying any additional re-
 5 sources needed to continue the development and commer-
 6 cial application of transmission infrastructure tech-
 7 nologies.

8 **Subtitle C—Renewable Energy**

9 **PART 1—AUTHORIZATION OF APPROPRIATIONS**

10 **SEC. 21301. RENEWABLE ENERGY.**

11 (a) IN GENERAL.—The following sums are author-
 12 ized to be appropriated to the Secretary for renewable en-
 13 ergy research, development, demonstration, and commer-
 14 cial application activities, including activities authorized
 15 under this subtitle:

16 (1) For fiscal year 2004, \$380,000,000.

17 (2) For fiscal year 2005, \$420,000,000.

18 (3) For fiscal year 2006, \$460,000,000.

19 (4) For fiscal year 2007, \$499,000,000.

20 (b) BIOENERGY.—From the amounts authorized
 21 under subsection (a), the following sums are authorized
 22 to be appropriated to carry out section 21311 and section
 23 21706:

24 (1) For fiscal year 2004, \$135,425,000.

25 (2) For fiscal year 2005, \$155,600,000.

1 (3) For fiscal year 2006, \$167,650,000.

2 (4) For fiscal year 2007, \$180,000,000.

3 (c) PUBLIC BUILDINGS.—From the amounts author-
4 ized under subsection (a), \$30,000,000 for each of the fis-
5 cal years 2004 through 2007 are authorized to be appro-
6 priated to carry out section 21322.

7 (d) LIMITS ON USE OF FUNDS.—

8 (1) EXCLUSION.—None of the funds authorized
9 to be appropriated under this section may be used
10 for Renewable Support and Implementation.

11 (2) BIOENERGY.—Of the funds authorized
12 under subsection (b), not less than \$5,000,000 for
13 each fiscal year shall be made available for grants to
14 Historically Black Colleges and Universities, Tribal
15 Colleges, and Hispanic-Serving Institutions.

16 (3) RURAL AND REMOTE LOCATIONS.—In car-
17 rying out this section, the Secretary, in consultation
18 with the Secretary of Agriculture, shall demonstrate
19 the use of advanced wind power technology, biomass,
20 geothermal energy systems, and other renewable en-
21 ergy technologies to assist in delivering electricity to
22 rural and remote locations.

23 (4) REGIONAL FIELD VERIFICATION.—Of the
24 funds authorized under subsection (a), not less than
25 \$4,000,000 for each fiscal year shall be made avail-

1 able for the Regional Field Verification Program of
2 the Department.

3 (5) HYDROPOWER DEMONSTRATION
4 PROJECTS.—Of the funds authorized under sub-
5 section (a), such sums as may be necessary shall be
6 made available for demonstration projects of off-
7 stream pumped storage hydropower.

8 **PART 2—BIOENERGY**

9 **SEC. 21311. BIOENERGY PROGRAMS.**

10 The Secretary shall conduct a program of research,
11 development, demonstration, and commercial application
12 for bioenergy, including—

13 (1) biopower energy systems;

14 (2) biofuels;

15 (3) integrated applications of both biopower and
16 biofuels;

17 (4) cross-cutting research and development in
18 feedstocks; and

19 (5) economic analysis.

20 **PART 3—MISCELLANEOUS PROJECTS**

21 **SEC. 21321. MISCELLANEOUS PROJECTS.**

22 (a) PROGRAMS.—The Secretary shall conduct re-
23 search, development, demonstration, and commercial ap-
24 plication programs for—

25 (1) ocean energy, including wave energy;

1 (2) the combined use of renewable energy tech-
2 nologies with one another and with other energy
3 technologies, including the combined use of wind
4 power and coal gasification technologies; and

5 (3) hydrogen carrier fuels.

6 (b) STUDY.—(1) The Secretary shall enter into an
7 arrangement with the National Academy of Sciences to
8 conduct a study on—

9 (A) the feasibility of various methods of renew-
10 able generation of energy from the ocean, including
11 energy from waves, tides, currents, and thermal gra-
12 dients; and

13 (B) the research, development, demonstration,
14 and commercial application activities required to
15 make marine renewable energy generation competi-
16 tive with other forms of electricity generation.

17 (2) Not later than 1 year after the date of the enact-
18 ment of this Act, the Secretary shall transmit the study
19 to the Congress along with the Secretary's recommenda-
20 tions for implementing the results of the study.

21 **SEC. 21322. RENEWABLE ENERGY IN PUBLIC BUILDINGS.**

22 (a) DEMONSTRATION AND TECHNOLOGY TRANSFER
23 PROGRAM.—The Secretary shall establish a program for
24 the demonstration of innovative technologies for solar and
25 other renewable energy sources in buildings owned or op-

1 erated by a State or local government, and for the dissemi-
2 nation of information resulting from such demonstration
3 to interested parties.

4 (b) LIMIT ON FEDERAL FUNDING.—The Secretary
5 shall provide under this section no more than 40 percent
6 of the incremental costs of the solar or other renewable
7 energy source project funded.

8 (c) REQUIREMENT.—As part of the application for
9 awards under this section, the Secretary shall require all
10 applicants—

11 (1) to demonstrate a continuing commitment to
12 the use of solar and other renewable energy sources
13 in buildings they own or operate; and

14 (2) to state how they expect any award to fur-
15 ther their transition to the significant use of renew-
16 able energy.

17 **Subtitle D—Nuclear Energy**

18 **PART 1—AUTHORIZATION OF APPROPRIATIONS**

19 **SEC. 21401. NUCLEAR ENERGY.**

20 (a) IN GENERAL.—The following sums are author-
21 ized to be appropriated to the Secretary for nuclear energy
22 research, development, demonstration, and commercial ap-
23 plication activities, including activities authorized under
24 this subtitle:

25 (1) For fiscal year 2004, \$388,000,000.

1 (2) For fiscal year 2005, \$416,000,000.

2 (3) For fiscal year 2006, \$445,000,000.

3 (4) For fiscal year 2007, \$474,000,000.

4 (b) ALLOCATIONS.—From amounts authorized under
5 subsection (a), the following sums are authorized:

6 (1) NUCLEAR INFRASTRUCTURE SUPPORT.—

7 For activities under section 21411(e)—

8 (A) for fiscal year 2004, \$125,000,000;

9 (B) for fiscal year 2005, \$130,000,000;

10 (C) for fiscal year 2006, \$135,000,000;

11 and

12 (D) for fiscal year 2007, \$140,000,000.

13 (2) ADVANCED FUEL RECYCLING PROGRAM.—

14 For activities under section 21421—

15 (A) for fiscal year 2004, \$80,000,000;

16 (B) for fiscal year 2005, \$93,000,000;

17 (C) for fiscal year 2006, \$106,000,000;

18 and

19 (D) for fiscal year 2007, \$120,000,000.

20 (3) UNIVERSITY PROGRAMS.—For activities

21 under section 21431—

22 (A) for fiscal year 2004, \$35,200,000, of

23 which—

24 (i) \$3,000,000 shall be for activities

25 under subsection (b)(1) of that section;

1 (ii) \$4,275,000 shall be for activities
2 under subsection (b)(2) of that section;

3 (iii) \$8,000,000 shall be for activities
4 under subsection (b)(3) of that section;

5 (iv) \$500,000 shall be for activities
6 under subsection (b)(5) of that section;

7 (v) \$7,000,000 shall be for activities
8 under subsection (c)(1) of that section;

9 (vi) \$700,000 shall be for activities
10 under subsection (c)(2) of that section;

11 (vii) \$10,000,000 shall be for activi-
12 ties under subsection (c)(3) of that section;

13 (viii) \$1,000,000 shall be for activities
14 under subsection (d)(1) of that section;

15 and

16 (ix) \$725,000 shall be for activities
17 under subsection (d)(2) of that section;

18 (B) for fiscal year 2005, \$44,350,000, of

19 which—

20 (i) \$3,100,000 shall be for activities
21 under subsection (b)(1) of that section;

22 (ii) \$6,275,000 shall be for activities
23 under subsection (b)(2) of that section;

24 (iii) \$12,000,000 shall be for activities
25 under subsection (b)(3) of that section;

1 (iv) \$550,000 shall be for activities
2 under subsection (b)(5) of that section;

3 (v) \$7,500,000 shall be for activities
4 under subsection (c)(1) of that section;

5 (vi) \$1,100,000 shall be for activities
6 under subsection (c)(2) of that section;

7 (vii) \$12,000,000 shall be for activi-
8 ties under subsection (c)(3) of that section;

9 (viii) \$1,100,000 shall be for activities
10 under subsection (d)(1) of that section;

11 and

12 (ix) \$725,000 shall be for activities
13 under subsection (d)(2) of that section;

14 (C) for fiscal year 2006, \$49,200,000, of
15 which—

16 (i) \$3,200,000 shall be for activities
17 under subsection (b)(1) of that section;

18 (ii) \$7,150,000 shall be for activities
19 under subsection (b)(2) of that section;

20 (iii) \$13,000,000 shall be for activities
21 under subsection (b)(3) of that section;

22 (iv) \$600,000 shall be for activities
23 under subsection (b)(5) of that section;

24 (v) \$8,000,000 shall be for activities
25 under subsection (c)(1) of that section;

1 (vi) \$1,200,000 shall be for activities
2 under subsection (c)(2) of that section;

3 (vii) \$14,000,000 shall be for activi-
4 ties under subsection (c)(3) of that section;

5 (viii) \$1,200,000 shall be for activities
6 under subsection (d)(1) of that section;

7 and

8 (ix) \$850,000 shall be for activities
9 under subsection (d)(2) of that section;

10 and

11 (D) for fiscal year 2007, \$54,950,000, of
12 which—

13 (i) \$3,200,000 shall be for activities
14 under subsection (b)(1) of that section;

15 (ii) \$8,150,000 shall be for activities
16 under subsection (b)(2) of that section;

17 (iii) \$15,000,000 shall be for activities
18 under subsection (b)(3) of that section;

19 (iv) \$650,000 shall be for activities
20 under subsection (b)(5) of that section;

21 (v) \$8,500,000 shall be for activities
22 under subsection (c)(1); of that section;

23 (vi) \$1,300,000 shall be for activities
24 under subsection (c)(2) of that section;

- 1 (vii) \$16,000,000 shall be for activi-
2 ties under subsection (c)(3) of that section;
3 (viii) \$1,300,000 shall be for activities
4 under subsection (d)(1) of that section;
5 and
6 (ix) \$850,000 shall be for activities
7 under subsection (d)(2) of that section.

8 (c) LIMIT ON USE OF FUNDS.—None of the funds
9 authorized under this section may be used for decommis-
10 sioning the Fast Flux Test Facility.

11 **PART 2—NUCLEAR ENERGY RESEARCH**
12 **PROGRAMS**

13 **SEC. 21411. NUCLEAR ENERGY RESEARCH PROGRAMS.**

14 (a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The
15 Secretary shall carry out a Nuclear Energy Research Ini-
16 tiative for research and development related to nuclear en-
17 ergy.

18 (b) NUCLEAR ENERGY PLANT OPTIMIZATION PRO-
19 GRAM.—The Secretary shall carry out a Nuclear Energy
20 Plant Optimization Program to support research and de-
21 velopment activities addressing reliability, availability, pro-
22 ductivity, and component aging in existing nuclear power
23 plants.

24 (c) NUCLEAR POWER 2010 PROGRAM.—The Sec-
25 retary shall carry out a Nuclear Power 2010 Program,

1 consistent with recommendations in the October 2001 re-
2 port entitled “A Roadmap to Deploy New Nuclear Power
3 Plants in the United States by 2010” issued by the Nu-
4 clear Energy Research Advisory Committee of the Depart-
5 ment. The Program shall—

6 (1) rely on the expertise and capabilities of the
7 National Laboratories in the areas of advanced nu-
8 clear fuels cycles and fuels testing;

9 (2) pursue an approach that considers a variety
10 of reactor designs;

11 (3) include participation of international col-
12 laborators in research, development, and design ef-
13 forts as appropriate; and

14 (4) encourage industry participation.

15 (d) GENERATION IV NUCLEAR ENERGY SYSTEMS
16 INITIATIVE.—The Secretary shall carry out a Generation
17 IV Nuclear Energy Systems Initiative to develop an over-
18 all technology plan and to support research and develop-
19 ment necessary to make an informed technical decision
20 about the most promising candidates for eventual commer-
21 cial application. The Initiative shall examine advanced
22 proliferation-resistant and passively safe reactor designs,
23 including designs that—

24 (1) are economically competitive with other elec-
25 tric power generation plants;

1 (2) have higher efficiency, lower cost, and im-
2 proved safety compared to reactors in operation on
3 the date of enactment of this Act;

4 (3) use fuels that are proliferation resistant and
5 have substantially reduced production of high-level
6 waste per unit of output; and

7 (4) utilize improved instrumentation.

8 (e) NUCLEAR INFRASTRUCTURE SUPPORT.—The
9 Secretary shall develop and implement a strategy for the
10 facilities of the Office of Nuclear Energy, Science, and
11 Technology and shall transmit a report containing the
12 strategy along with the President's budget request to the
13 Congress for fiscal year 2005. Such strategy shall provide
14 a cost-effective means for—

15 (1) maintaining existing facilities and infra-
16 structure, as needed;

17 (2) closing unneeded facilities;

18 (3) making facility upgrades and modifications;

19 and

20 (4) building new facilities.

21 **PART 3—ADVANCED FUEL RECYCLING**

22 **SEC. 21421. ADVANCED FUEL RECYCLING PROGRAM.**

23 (a) IN GENERAL.—The Secretary, through the Direc-
24 tor of the Office of Nuclear Energy, Science and Tech-
25 nology, shall conduct an advanced fuel recycling tech-

1 nology research and development program to evaluate pro-
2 liferation-resistant fuel recycling and transmutation tech-
3 nologies which minimize environmental or public health
4 and safety impacts as an alternative to aqueous reprocess-
5 ing technologies deployed as of the date of enactment of
6 this Act in support of evaluation of alternative national
7 strategies for spent nuclear fuel and the Generation IV
8 advanced reactor concepts, subject to annual review by the
9 Secretary's Nuclear Energy Research Advisory Committee
10 or other independent entity, as appropriate. Opportunities
11 to enhance progress of this program through international
12 cooperation should be sought.

13 (b) REPORTS.—The Secretary shall report on the ac-
14 tivities of the advanced fuel recycling technology research
15 and development program, as part of the Department's
16 annual budget submission.

17 **PART 4—UNIVERSITY PROGRAMS**

18 **SEC. 21431. UNIVERSITY NUCLEAR SCIENCE AND ENGI-** 19 **NEERING SUPPORT.**

20 (a) ESTABLISHMENT.—The Secretary shall support
21 a program to invest in human resources and infrastructure
22 in the nuclear sciences and engineering and related fields
23 (including health physics and nuclear and radiochemistry),
24 consistent with departmental missions related to civilian
25 nuclear research and development.

1 (b) DUTIES.—In carrying out the program under this
2 section, the Secretary shall—

3 (1) establish a graduate and undergraduate fel-
4 lowship program to attract new and talented stu-
5 dents;

6 (2) establish a Junior Faculty Research Initi-
7 ation Grant Program to assist institutions of higher
8 education in recruiting and retaining new faculty in
9 the nuclear sciences and engineering;

10 (3) support fundamental nuclear sciences and
11 engineering research through the Nuclear Engineer-
12 ing Education Research Program;

13 (4) encourage collaborative nuclear research
14 among industry, National Laboratories, and institu-
15 tions of higher education through the Nuclear En-
16 ergy Research Initiative; and

17 (5) support communication and outreach re-
18 lated to nuclear science and engineering.

19 (c) STRENGTHENING UNIVERSITY RESEARCH AND
20 TRAINING REACTORS AND ASSOCIATED INFRASTRUC-
21 TURE.—Activities under this section may include—

22 (1) converting research reactors currently using
23 high-enrichment fuels to low-enrichment fuels, up-
24 grading operational instrumentation, and sharing of
25 reactors among institutions of higher education;

1 (2) providing technical assistance, in collabora-
2 tion with the United States nuclear industry, in reli-
3 censing and upgrading training reactors as part of
4 a student training program; and

5 (3) providing funding, through the Innovations
6 in Nuclear Infrastructure and Education Program,
7 for reactor improvements as part of a focused effort
8 that emphasizes research, training, and education.

9 (d) UNIVERSITY-NATIONAL LABORATORY INTER-
10 ACTIONS.—The Secretary shall develop—

11 (1) a sabbatical fellowship program for profes-
12 sors at institutions of higher education to spend ex-
13 tended periods of time at National Laboratories in
14 the areas of nuclear science and technology; and

15 (2) a visiting scientist program in which Na-
16 tional Laboratory staff can spend time in academic
17 nuclear science and engineering departments.

18 The Secretary may provide fellowships for students to
19 spend time at National Laboratories in the area of nuclear
20 science with a member of the Laboratory staff acting as
21 a mentor.

22 (e) OPERATING AND MAINTENANCE COSTS.—Fund-
23 ing for a research project provided under this section may
24 be used to offset a portion of the operating and mainte-

5 SEC. 21441. GEOLOGICAL ISOLATION OF SPENT FUEL.

14 **Subtitle E—Fossil Energy**

16 **SEC. 21501. FOSSIL ENERGY.**

24 (1) For fiscal year 2004, \$530,000,000.

25 (2) For fiscal year 2005, \$556,000,000.

1 (3) For fiscal year 2006, \$583,000,000.

2 (4) For fiscal year 2007, \$611,000,000.

3 No less than 60 percent of the amount appropriated for
4 each fiscal year under this subsection shall be available
5 for activities related to the coal research program under
6 section 21511(a).

7 (b) ULTRA-DEEPWATER AND UNCONVENTIONAL RE-
8 SOURCES.—

9 (1) OIL AND GAS LEASE INCOME.—For each of
10 fiscal years 2004 through 2010, from any royalties,
11 rents, and bonuses derived from Federal onshore
12 and offshore oil and gas leases issued under the
13 Outer Continental Shelf Lands Act and the Mineral
14 Leasing Act which are deposited in the Treasury,
15 and after distribution of any such funds as described
16 in paragraph (2), an amount equal to 7.5 percent of
17 the amount of royalties, rents, and bonuses derived
18 from those leases deposited in the Treasury shall be
19 deposited into the Ultra-Deepwater and Unconven-
20 tional Natural Gas and Other Petroleum Research
21 Fund (in this subsection referred to as the Fund).
22 For purposes of this subsection, the term “royalties”
23 excludes proceeds from the sale of royalty production
24 taken in kind and royalty production that is trans-
25 ferred under section 27(a)(3) of the Outer Conti-

1 nental Shelf Lands Act (43 U.S.C. 1353(a)(3)).
2 Monies in the Fund shall be available to the Sec-
3 retary for obligation under part 3, without fiscal
4 year limitation, to the extent provided in advance in
5 appropriations Acts.

6 (2) PRIOR DISTRIBUTIONS.—The distributions
7 described in paragraph (1) are those required by
8 law—

9 (A) to States and to the Reclamation Fund
10 under the Mineral Leasing Act (30 U.S.C.
11 191(a)); and

12 (B) to other funds receiving monies from
13 Federal oil and gas leasing programs, includ-
14 ing—

15 (i) any recipients pursuant to section
16 8(g) of the Outer Continental Shelf Lands
17 Act (43 U.S.C. 1337(g));

18 (ii) the Land and Water Conservation
19 Fund, pursuant to section 2(c) of the Land
20 and Water Conservation Fund Act of 1965
21 (16 U.S.C. 4601–5(c)); and

22 (iii) the Historic Preservation Fund,
23 pursuant to section 108 of the National
24 Historic Preservation Act (16 U.S.C.
25 470h).

1 (3) ALLOCATION.—Amounts made available
2 under this subsection in each fiscal year shall be al-
3 located as follows:

4 (A) 67.5 percent shall be for ultra-deep-
5 water natural gas and other petroleum activities
6 under section 21522;

7 (B) 22.5 percent shall be for unconven-
8 tional natural gas and other petroleum resource
9 activities under section 21523; and

10 (C) 10 percent shall be for research com-
11 plementary to research under section
12 21521(b)(1) through (3).

13 (c) ALLOCATIONS.—From amounts authorized under
14 subsection (a), the following sums are authorized:

15 (1) FUEL CELL PROTON EXCHANGE MEMBRANE
16 TECHNOLOGY.—For activities under section
17 21511(c)(2), \$28,000,000 for each of the fiscal
18 years 2004 through 2007.

19 (2) COAL MINING TECHNOLOGIES.—For activi-
20 ties under section 21512—

21 (A) for fiscal year 2004, \$12,000,000; and

22 (B) for fiscal year 2005, \$15,000,000.

23 (3) OFFICE OF ARCTIC ENERGY.—For the Of-
24 fice of Arctic Energy under section 3197 of the
25 Floyd D. Spence National Defense Authorization

1 Act for Fiscal Year 2001 (Public Law 106–398),
2 \$25,000,000 for each of fiscal years 2004 through
3 2007.

4 (d) EXTENDED AUTHORIZATION.—There are author-
5 ized to be appropriated to the Secretary for the Office of
6 Arctic Energy under section 3197 of the Floyd D. Spence
7 National Defense Authorization Act for Fiscal Year 2001
8 (Public Law 106–398), \$25,000,000 for each of fiscal
9 years 2008 through 2011.

10 (e) LIMITS ON USE OF FUNDS.—

11 (1) EXCLUSIONS.—None of the funds author-
12 ized under this section may be used for—

13 (A) Fossil Energy Environmental Restora-
14 tion; or

15 (B) Import/Export Authorization.

16 (2) UNIVERSITY COAL MINING RESEARCH.—Of
17 the funds authorized under subsection (c)(2), not
18 less than 20 percent of the funds appropriated for
19 each fiscal year shall be dedicated to research and
20 development carried out at institutions of higher
21 education.

22 **PART 2—RESEARCH PROGRAMS**

23 **SEC. 21511. FOSSIL ENERGY RESEARCH PROGRAMS.**

24 (a) COAL RESEARCH.—(1) In addition to the Clean
25 Coal Power Initiative authorized under division E, the

1 Secretary shall conduct a program of research, develop-
2 ment, demonstration, and commercial application for coal
3 and power systems, including—

- 4 (A) central systems;
- 5 (B) sequestration research and development;
- 6 (C) fuels;
- 7 (D) advanced research; and
- 8 (E) advanced separation technologies.

9 (2) Not later than 6 months after the date of enact-
10 ment of this Act, the Secretary shall transmit to the Con-
11 gress a report providing—

- 12 (A) a detailed description of how proposals will
- 13 be solicited and evaluated;
- 14 (B) a list of activities and technical milestones;
- 15 and
- 16 (C) a description of how these activities will
- 17 complement and not duplicate the Clean Coal Power
- 18 Initiative authorized under division E.

19 (b) OIL AND GAS RESEARCH.—The Secretary shall
20 conduct a program of research, development, demonstra-
21 tion, and commercial application on oil and gas, includ-
22 ing—

- 23 (1) exploration and production;
- 24 (2) gas hydrates;
- 25 (3) reservoir life and extension;

1 (4) transportation and distribution infrastruc-
2 ture;

3 (5) ultraclean fuels;

4 (6) heavy oil and oil shale; and

5 (7) environmental research.

6 (c) FUEL CELLS.—(1) The Secretary shall conduct
7 a program of research, development, demonstration, and
8 commercial application on fuel cells for low-cost, high-effi-
9 ciency, fuel-flexible, modular power systems.

10 (2) The demonstrations shall include fuel cell proton
11 exchange membrane technology for commercial, residen-
12 tial, and transportation applications, and distributed gen-
13 eration systems, utilizing improved manufacturing produc-
14 tion and processes.

15 (d) TECHNOLOGY TRANSFER.—To the maximum ex-
16 tent practicable, existing technology transfer mechanisms
17 shall be used to implement oil and gas exploration and
18 production technology transfer programs.

19 **SEC. 21512. RESEARCH AND DEVELOPMENT FOR COAL MIN-**
20 **ING TECHNOLOGIES.**

21 (a) ESTABLISHMENT.—The Secretary shall carry out
22 a program of research and development on coal mining
23 technologies. The Secretary shall cooperate with appro-
24 priate Federal agencies, coal producers, trade associations,
25 equipment manufacturers, institutions of higher education

1 with mining engineering departments, and other relevant
2 entities.

3 (b) PROGRAM.—The research and development activi-
4 ties carried out under this section shall—

5 (1) be based on the mining research and devel-
6 opment priorities identified by the Mining Industry
7 of the Future Program and in the recommendations
8 from relevant reports of the National Academy of
9 Sciences on mining technologies; and

10 (2) expand mining research capabilities at insti-
11 tutions of higher education.

12 **PART 3—ULTRA-DEEPWATER AND UNCONVEN-**
13 **TIONAL NATURAL GAS AND OTHER PETRO-**
14 **LEUM RESOURCES**

15 **SEC. 21521. PROGRAM AUTHORITY.**

16 (a) IN GENERAL.—The Secretary shall carry out a
17 program under this part of research, development, dem-
18 onstration, and commercial application of technologies for
19 ultra-deepwater and unconventional natural gas and other
20 petroleum resource exploration and production, including
21 safe operations and environmental mitigation (including
22 reduction of greenhouse gas emissions and sequestration
23 of carbon).

24 (b) PROGRAM ELEMENTS.—The program under this
25 part shall address the following areas, including improving

1 safety and minimizing environmental impacts of activities
2 within each area:

3 (1) Ultra-deepwater technology.

4 (2) Ultra-deepwater architecture.

5 (3) Unconventional natural gas and other petro-
6 leum resource exploration and production tech-
7 nology.

8 (c) LIMITATION ON LOCATION OF FIELD ACTIVI-
9 TIES.—Field activities under the program under this part
10 shall be carried out only—

11 (1) in—

12 (A) areas in the territorial waters of the
13 United States not under any Outer Continental
14 Shelf moratorium as of September 30, 2002;

15 (B) areas onshore in the United States on
16 public land administered by the Secretary of the
17 Interior available for oil and gas leasing, where
18 consistent with applicable law and land use
19 plans; and

20 (C) areas onshore in the United States on
21 State or private land, subject to applicable law;
22 and

23 (2) with the approval of the appropriate Fed-
24 eral or State land management agency or private
25 land owner.

1 (d) RESEARCH AT NATIONAL ENERGY TECHNOLOGY
2 LABORATORY.—The Secretary, through the National En-
3 ergy Technology Laboratory, shall carry out research com-
4 plementary to research under subsection (b).

5 (e) CONSULTATION WITH SECRETARY OF THE INTE-
6 RIOR.—In carrying out this part, the Secretary shall con-
7 sult regularly with the Secretary of the Interior.

8 **SEC. 21522. ULTRA-DEEPWATER PROGRAM.**

9 (a) IN GENERAL.—The Secretary shall carry out the
10 activities under paragraphs (1) and (2) of section
11 21521(b), to maximize the value of the ultra-deepwater
12 natural gas and other petroleum resources of the United
13 States by increasing the supply of such resources and by
14 reducing the cost and increasing the efficiency of explo-
15 ration for and production of such resources, while improv-
16 ing safety and minimizing environmental impacts.

17 (b) ROLE OF THE SECRETARY.—The Secretary shall
18 have ultimate responsibility for, and oversight of, all as-
19 pects of the program under this section.

20 (c) ROLE OF THE PROGRAM CONSORTIUM.—

21 (1) IN GENERAL.—The Secretary shall contract
22 with a consortium to—

23 (A) manage awards pursuant to subsection
24 (f)(4);

1 (B) make recommendations to the Sec-
2 retary for project solicitations;

3 (C) disburse funds awarded under sub-
4 section (f) as directed by the Secretary in ac-
5 cordance with the annual plan under subsection
6 (e); and

7 (D) carry out other activities assigned to
8 the program consortium by this section.

9 (2) LIMITATION.—The Secretary may not as-
10 sign any activities to the program consortium except
11 as specifically authorized under this section.

12 (3) CONFLICT OF INTEREST.—(A) The Sec-
13 retary shall establish procedures—

14 (i) to ensure that each board member, offi-
15 cer, or employee of the program consortium
16 who is in a decisionmaking capacity under sub-
17 section (f)(3) or (4) shall disclose to the Sec-
18 retary any financial interests in, or financial re-
19 lationships with, applicants for or recipients of
20 awards under this section, including those of
21 his or her spouse or minor child, unless such re-
22 lationships or interests would be considered to
23 be remote or inconsequential; and

24 (ii) to require any board member, officer,
25 or employee with a financial relationship or in-

1 terest disclosed under clause (i) to recuse him-
2 self or herself from any review under subsection
3 (f)(3) or oversight under subsection (f)(4) with
4 respect to such applicant or recipient.

5 (B) The Secretary may disqualify an applica-
6 tion or revoke an award under this section if a board
7 member, officer, or employee has failed to comply
8 with procedures required under subparagraph
9 (A)(ii).

10 (d) SELECTION OF THE PROGRAM CONSORTIUM.—

11 (1) IN GENERAL.—The Secretary shall select
12 the program consortium through an open, competi-
13 tive process.

14 (2) MEMBERS.—The program consortium may
15 include corporations, institutions of higher edu-
16 cation, National Laboratories, or other research in-
17 stitutions. After submitting a proposal under para-
18 graph (4), the program consortium may not add
19 members without the consent of the Secretary.

20 (3) TAX STATUS.—The program consortium
21 shall be an entity that is exempt from tax under sec-
22 tion 501(c)(3) of the Internal Revenue Code of
23 1986.

24 (4) SCHEDULE.—Not later than 90 days after
25 the date of enactment of this Act, the Secretary

1 shall solicit proposals for the creation of the pro-
2 gram consortium, which must be submitted not less
3 than 180 days after the date of enactment of this
4 Act. The Secretary shall select the program consor-
5 tium not later than 240 days after such date of en-
6 actment.

7 (5) APPLICATION.—Applicants shall submit a
8 proposal including such information as the Secretary
9 may require. At a minimum, each proposal shall—

10 (A) list all members of the consortium;

11 (B) fully describe the structure of the con-
12 sortium, including any provisions relating to in-
13 tellectual property; and –

14 (C) describe how the applicant would carry
15 out the activities of the program consortium
16 under this section.

17 (6) ELIGIBILITY.—To be eligible to be selected
18 as the program consortium, an applicant must be an
19 entity whose members collectively have demonstrated
20 capabilities in planning and managing research, de-
21 velopment, demonstration, and commercial applica-
22 tion programs in natural gas or other petroleum ex-
23 ploration or production.

24 (7) CRITERION.—The Secretary may consider
25 the amount of the fee an applicant proposes to re-

1 ceive under subsection (g) in selecting a consortium
2 under this section.

3 (e) ANNUAL PLAN.—

4 (1) IN GENERAL.—The program under this sec-
5 tion shall be carried out pursuant to an annual plan
6 prepared by the Secretary in accordance with para-
7 graph (2).

8 (2) DEVELOPMENT.—(A) Before drafting an
9 annual plan under this subsection, the Secretary
10 shall solicit specific written recommendations from
11 the program consortium for each element to be ad-
12 dressed in the plan, including those described in
13 paragraph (4). The Secretary may request that the
14 program consortium submit its recommendations in
15 the form of a draft annual plan.

16 (B) The Secretary shall submit the rec-
17 ommendations of the program consortium under
18 subparagraph (A) to the Ultra-Deepwater Advisory
19 Committee established under section 21525(a) for
20 review, and such Advisory Committee shall provide
21 to the Secretary written comments by a date deter-
22 mined by the Secretary. The Secretary may also so-
23 licit comments from any other experts.

1 (C) The Secretary shall consult regularly with
2 the program consortium throughout the preparation
3 of the annual plan.

4 (3) PUBLICATION.—The Secretary shall trans-
5 mit to the Congress and publish in the Federal Reg-
6 ister the annual plan, along with any written com-
7 ments received under paragraph (2)(A) and (B).
8 The annual plan shall be transmitted and published
9 not later than 60 days after the date of enactment
10 of an Act making appropriations for a fiscal year for
11 the program under this section.

12 (4) CONTENTS.—The annual plan shall describe
13 the ongoing and prospective activities of the pro-
14 gram under this section and shall include—

15 (A) a list of any solicitations for awards
16 that the Secretary plans to issue to carry out
17 research, development, demonstration, or com-
18 mercial application activities, including the top-
19 ics for such work, who would be eligible to
20 apply, selection criteria, and the duration of
21 awards; and

22 (B) a description of the activities expected
23 of the program consortium to carry out sub-
24 section (f)(4).

25 (f) AWARDS.—

1 (1) IN GENERAL.—The Secretary shall make
2 awards to carry out research, development, dem-
3 onstration, and commercial application activities
4 under the program under this section. The program
5 consortium shall not be eligible to receive such
6 awards, but members of the program consortium
7 may receive such awards.

8 (2) PROPOSALS.—The Secretary shall solicit
9 proposals for awards under this subsection in such
10 manner and at such time as the Secretary may pre-
11 scribe, in consultation with the program consortium.

12 (3) REVIEW.—The Secretary shall make awards
13 under this subsection through a competitive process,
14 which shall include a review by individuals selected
15 by the Secretary. Such individuals shall include, for
16 each application, Federal officials, the program con-
17 sortium, and non-Federal experts who are not board
18 members, officers, or employees of the program con-
19 sortium or of a member of the program consortium.

20 (4) OVERSIGHT.—(A) The program consortium
21 shall oversee the implementation of awards under
22 this subsection, consistent with the annual plan
23 under subsection (e), including disbursing funds and
24 monitoring activities carried out under such awards

1 for compliance with the terms and conditions of the
2 awards.

3 (B) Nothing in subparagraph (A) shall limit the
4 authority or responsibility of the Secretary to over-
5 see awards, or limit the authority of the Secretary
6 to review or revoke awards.

7 (C) The Secretary shall provide to the program
8 consortium the information necessary for the pro-
9 gram consortium to carry out its responsibilities
10 under this paragraph.

11 (g) FEE.—

12 (1) IN GENERAL.—To compensate the program
13 consortium for carrying out its activities under this
14 section, the Secretary shall provide to the program
15 consortium a fee in an amount not to exceed 7.5
16 percent of the amounts awarded under subsection (f)
17 for each fiscal year.

18 (2) ADVANCE.—The Secretary shall advance
19 funds to the program consortium upon selection of
20 the consortium, which shall be deducted from
21 amounts to be provided under paragraph (1).

22 (h) AUDIT.—The Secretary shall retain an inde-
23 pendent, commercial auditor to determine the extent to
24 which funds provided to the program consortium, and
25 funds provided under awards made under subsection (f),

1 have been expended in a manner consistent with the pur-
2 poses and requirements of this part. The auditor shall
3 transmit a report annually to the Secretary, who shall
4 transmit the report to Congress, along with a plan to rem-
5 edy any deficiencies cited in the report.

6 **SEC. 21523. UNCONVENTIONAL NATURAL GAS AND OTHER**
7 **PETROLEUM RESOURCES PROGRAM.**

8 (a) IN GENERAL.—The Secretary shall carry out ac-
9 tivities under section 21521(b)(3), to maximize the value
10 of the onshore unconventional natural gas and other petro-
11 leum resources of the United States by increasing the sup-
12 ply of such resources and by reducing the cost and increas-
13 ing the efficiency of exploration for and production of such
14 resources, while improving safety and minimizing environ-
15 mental impacts.

16 (b) AWARDS.—

17 (1) IN GENERAL.—The Secretary shall carry
18 out this section through awards made through an
19 open, competitive process.

20 (2) CONSORTIA.—In carrying out paragraph
21 (1), the Secretary shall give preference to making
22 awards to consortia.

23 (c) AUDIT.—The Secretary shall retain an inde-
24 pendent, commercial auditor to determine the extent to
25 which funds provided under awards made under this sec-

tion have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

(d) FOCUS AREAS.—Awards under this section may focus on areas including advanced coal-bed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, innovative exploration and production techniques, enhanced recovery techniques, and environmental mitigation of unconventional natural gas and other petroleum resources exploration and production.

(e) ACTIVITIES BY THE UNITED STATES GEOLOGICAL SURVEY.—The Secretary of the Interior, through the United States Geological Survey, shall, where appropriate, carry out programs of long-term research to complement the programs under this section.

SEC. 21524. ADDITIONAL REQUIREMENTS FOR AWARDS.

(a) DEMONSTRATION PROJECTS.—An application for an award under this part for a demonstration project shall describe with specificity the intended commercial use of the technology to be demonstrated.

(b) FLEXIBILITY IN LOCATING DEMONSTRATION PROJECTS.—Subject to the limitation in section 21521(c), a demonstration project under this part relating to an

1 ultra-deepwater technology or an ultra-deepwater architec-
2 ture may be conducted in deepwater depths.

3 (c) INTELLECTUAL PROPERTY AGREEMENTS.—If an
4 award under this part is made to a consortium (other than
5 the program consortium), the consortium shall provide to
6 the Secretary a signed contract agreed to by all members
7 of the consortium describing the rights of each member
8 to intellectual property used or developed under the award.

9 (d) TECHNOLOGY TRANSFER.—Each recipient of an
10 award under this part shall conduct technology transfer
11 activities, as appropriate, and outreach activities pursuant
12 to section 21809.

13 (e) COST-SHARING REDUCTION FOR INDEPENDENT
14 PRODUCERS.—In applying the cost-sharing requirements
15 under section 21802 to an award under this part made
16 solely to an independent producer of oil or gas, the Sec-
17 retary may reduce the applicable non-Federal requirement
18 in such section to a level not less than 10 percent of the
19 cost of the project.

20 **SEC. 21525. ADVISORY COMMITTEES.**

21 (a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

22 (1) ESTABLISHMENT.—Not later than 270 days
23 after the date of enactment of this section, the Sec-
24 retary shall establish an advisory committee to be
25 known as the Ultra-Deepwater Advisory Committee.

1 (2) MEMBERSHIP.—The advisory committee
2 under this subsection shall be composed of members
3 appointed by the Secretary and including—

4 (A) individuals with extensive research ex-
5 perience or operational knowledge of offshore
6 natural gas and other petroleum exploration
7 and production;

8 (B) individuals broadly representative of
9 the affected interests in ultra-deepwater natural
10 gas and other petroleum production, including
11 interests in environmental protection and safe
12 operations;

13 (C) no individuals who are Federal employ-
14 ees; and

15 (D) no individuals who are board members,
16 officers, or employees of the program consor-
17 tium.

18 (3) DUTIES.—The advisory committee under
19 this subsection shall—

20 (A) advise the Secretary on the develop-
21 ment and implementation of programs under
22 this part related to ultra-deepwater natural gas
23 and other petroleum resources; and

24 (B) carry out section 21522(e)(2)(B).

1 (4) COMPENSATION.—A member of the advi-
2 sory committee under this subsection shall serve
3 without compensation but shall receive travel ex-
4 penses, including per diem in lieu of subsistence, in
5 accordance with applicable provisions under sub-
6 chapter I of chapter 57 of title 5, United States
7 Code.

8 (b) UNCONVENTIONAL RESOURCES TECHNOLOGY
9 ADVISORY COMMITTEE.—

10 (1) ESTABLISHMENT.—Not later than 270 days
11 after the date of enactment of this section, the Sec-
12 retary shall establish an advisory committee to be
13 known as the Unconventional Resources Technology
14 Advisory Committee.

15 (2) MEMBERSHIP.—The advisory committee
16 under this subsection shall be composed of members
17 appointed by the Secretary and including—

18 (A) individuals with extensive research ex-
19 perience or operational knowledge of unconven-
20 tional natural gas and other petroleum resource
21 exploration and production, including inde-
22 pendent oil and gas producers;

23 (B) individuals broadly representative of
24 the affected interests in unconventional natural
25 gas and other petroleum resource exploration

1 and production, including interests in environ-
2 mental protection and safe operations; and

3 (C) no individuals who are Federal employ-
4 ees.

5 (3) DUTIES.—The advisory committee under
6 this subsection shall advise the Secretary on the de-
7 velopment and implementation of activities under
8 this part related to unconventional natural gas and
9 other petroleum resources.

10 (4) COMPENSATION.—A member of the advi-
11 sory committee under this subsection shall serve
12 without compensation but shall receive travel ex-
13 penses, including per diem in lieu of subsistence, in
14 accordance with applicable provisions under sub-
15 chapter I of chapter 57 of title 5, United States
16 Code.

17 (c) PROHIBITION.—No advisory committee estab-
18 lished under this section shall make recommendations on
19 funding awards to consortia or for specific projects.

20 **SEC. 21526. LIMITS ON PARTICIPATION.**

21 (a) IN GENERAL.—An entity shall be eligible to re-
22 ceive an award under this part only if the Secretary
23 finds—

1 (1) that the entity's participation in the pro-
2 gram under this part would be in the economic in-
3 terest of the United States; and

4 (2) that either—

5 (A) the entity is a United States-owned en-
6 tity organized under the laws of the United
7 States; or

8 (B) the entity is organized under the laws
9 of the United States and has a parent entity or-
10 ganized under the laws of a country which af-
11 fords—

12 (i) to United States-owned entities op-
13 portunities, comparable to those afforded
14 to any other entity, to participate in any
15 cooperative research venture similar to
16 those authorized under this part;

17 (ii) to United States-owned entities
18 local investment opportunities comparable
19 to those afforded to any other entity; and

20 (iii) adequate and effective protection
21 for the intellectual property rights of
22 United States-owned entities.

23 (b) SENSE OF CONGRESS AND REPORT.—It is the
24 Sense of the Congress that ultra-deepwater technology de-
25 veloped under this part is to be developed primarily for

1 production of ultra-deepwater natural gas and other petro-
2 leum resources of the United States, and that this priority
3 is to be reflected in the terms of grants, contracts, and
4 cooperative agreements entered under this part. As part
5 of the annual Departmental budget submission, the Sec-
6 retary shall report on all steps taken to implement the pol-
7 icy described in this subsection.

8 **SEC. 21527. FUND.**

9 There is hereby established in the Treasury of the
10 United States a separate fund to be known as the “Ultra-
11 Deepwater and Unconventional Natural Gas and Other
12 Petroleum Research Fund”.

13 **SEC. 21528. TRANSFER OF ADVANCED OIL AND GAS EXPLO-**
14 **RATION AND PRODUCTION TECHNOLOGIES.**

15 (a) ASSESSMENT.—The Secretary shall review tech-
16 nology programs throughout the Federal Government to
17 assess the suitability of technologies developed thereunder
18 for use in ultradeep drilling research, development, dem-
19 onstration, and commercial application.

20 (b) TECHNOLOGY TRANSFER.—Not later than 1 year
21 after the date of enactment of this Act, the Secretary shall
22 issue a solicitation seeking organizations knowledgeable of
23 the technology needs of the ultradeep drilling industry.
24 The Secretary shall select the most qualified applicant to
25 manage a program to transfer technologies the Secretary

1 determines suitable under subsection (a) to appropriate
2 entities. The organization selected under section 21522(d)
3 shall not be eligible for selection under this subsection.

4 (c) FUNDING.—From the funds available under sec-
5 tion 21501(b)(3)(C), \$1,000,000 shall be available to
6 carry out this section in each of the fiscal years 2004
7 through 2007.

8 **SEC. 21529. SUNSET.**

9 The authority provided by this part shall terminate
10 on September 30, 2010.

11 **SEC. 21530. DEFINITIONS.**

12 In this part:

13 (1) DEEPWATER.—The term “deepwater”
14 means a water depth that is greater than 200 but
15 less than 1,500 meters.

16 (2) PROGRAM CONSORTIUM.—The term “pro-
17 gram consortium” means the consortium selected
18 under section 21522(d).

19 (3) REMOTE OR INCONSEQUENTIAL.—The term
20 “remote or inconsequential” has the meaning given
21 that term in regulations issued by the Office of Gov-
22 ernment Ethics under section 208(b)(2) of title 18,
23 United States Code.

1 (4) ULTRA-DEEPWATER.—The term “ultra-
2 deepwater” means a water depth that is equal to or
3 greater than 1,500 meters.

4 (5) ULTRA-DEEPWATER ARCHITECTURE.—The
5 term “ultra-deepwater architecture” means the inte-
6 gration of technologies for the exploration for, or
7 production of, natural gas or other petroleum re-
8 sources located at ultra-deepwater depths.

9 (6) ULTRA-DEEPWATER TECHNOLOGY.—The
10 term “ultra-deepwater technology” means a discrete
11 technology that is specially suited to address one or
12 more challenges associated with the exploration for,
13 or production of, natural gas or other petroleum re-
14 sources located at ultra-deepwater depths.

15 (7) UNCONVENTIONAL NATURAL GAS AND
16 OTHER PETROLEUM RESOURCE.—The term “uncon-
17 ventional natural gas and other petroleum resource”
18 means natural gas and other petroleum resource lo-
19 cated onshore in an economically inaccessible geo-
20 logical formation.

21 **Subtitle F—Science**

22 **PART 1—AUTHORIZATION OF APPROPRIATIONS**

23 **SEC. 21601. SCIENCE.**

24 (a) IN GENERAL.—The following sums are author-
25 ized to be appropriated to the Secretary for research, de-

1 velopment, demonstration, and commercial application ac-
 2 tivities of the Office of Science, including activities author-
 3 ized under this subtitle, including the amounts authorized
 4 under the amendment made by section 21634(c)(2)(C),
 5 and including basic energy sciences, advanced scientific
 6 and computing research, biological and environmental re-
 7 search, fusion energy sciences, high energy physics, nu-
 8 clear physics, and research analysis and infrastructure
 9 support:

10 (1) For fiscal year 2004, \$3,785,000,000.

11 (2) For fiscal year 2005, \$4,153,000,000.

12 (3) For fiscal year 2006, \$4,618,000,000.

13 (4) For fiscal year 2007, \$5,310,000,000.

14 (b) ALLOCATIONS.—From amounts authorized under
 15 subsection (a), the following sums are authorized:

16 (1) FUSION ENERGY SCIENCES.—(A) For the
 17 Fusion Energy Sciences Program, excluding activi-
 18 ties under sections 21611 and 21612—

19 (i) for fiscal year 2004, \$276,000,000;

20 (ii) for fiscal year 2005, \$300,000,000;.

21 (iii) for fiscal year 2006, \$340,000,000;

22 and

23 (iv) for fiscal year 2007, \$350,000,000.

24 (B) For activities under section 21611 and for
 25 the project described in section 21612—

- 1 (i) for fiscal year 2004, \$12,000,000;
- 2 (ii) for fiscal year 2005, \$20,000,000;
- 3 (iii) for fiscal year 2006, \$50,000,000; and
- 4 (iv) for fiscal year 2007, \$75,000,000.

5 (2) SPALLATION NEUTRON SOURCE.—

6 (A) CONSTRUCTION.—For construction of
7 the Spallation Neutron Source—

- 8 (i) for fiscal year 2004, \$124,600,000;
 - 9 (ii) for fiscal year 2005, \$79,800,000;
 - 10 and
 - 11 (iii) for fiscal year 2006, \$41,100,000
- 12 for completion of construction.

13 (B) OTHER PROJECT FUNDING.—For
14 other project costs (including research and de-
15 velopment necessary to complete the project,
16 preoperations costs, and capital equipment re-
17 lated to construction) of the Spallation Neutron
18 Source, \$103,279,000 for the period encom-
19 passing fiscal years 2003 through 2006, to re-
20 main available until expended through Sep-
21 tember 30, 2006.

22 (3) NANOTECHNOLOGY RESEARCH AND DEVEL-
23 OPMENT.—For activities under section 21633—

- 24 (A) for fiscal year 2004, \$265,000,000;
- 25 (B) for fiscal year 2005, \$292,000,000;

1 (C) for fiscal year 2006, \$322,000,000;

2 and

3 (D) for fiscal year 2007, \$355,000,000.

4 (4) SCIENCE AND TECHNOLOGY SCHOLARSHIP
5 PROGRAM.—For activities under section 21636—

6 (A) for fiscal year 2004, \$800,000;

7 (B) for fiscal year 2005, \$1,600,000;

8 (C) for fiscal year 2006, \$2,000,000; and

9 (D) for fiscal year 2007, \$2,000,000.

10 (5) GENOMES TO LIFE.—For activities under
11 section 21641—

12 (A) \$100,000,000 for fiscal year 2004; and

13 (B) such sums as may be necessary for fis-
14 cal years 2005 through 2007.

15 (c) LIMITS ON USE OF FUNDS.—Of the funds au-
16 thorized under subsection (b)(1), no funds shall be avail-
17 able for implementation of the plan described in section
18 21612.

19 **PART 2—FUSION ENERGY SCIENCES**

20 **SEC. 21611. ITER.**

21 (a) IN GENERAL.—The United States is authorized
22 to participate in ITER in accordance with the provisions
23 of this section.

1 (b) AGREEMENT.—(1) The Secretary is authorized to
2 negotiate an agreement for United States participation in
3 ITER.

4 (2) Any agreement for United States participation in
5 ITER shall, at a minimum—

6 (A) clearly define the United States financial
7 contribution to construction and operating costs;

8 (B) ensure that the share of ITER’s high-tech-
9 nology components manufactured in the United
10 States is at least proportionate to the United States
11 financial contribution to ITER;

12 (C) ensure that the United States will not be fi-
13 nancially responsible for cost overruns in compo-
14 nents manufactured in other ITER participating
15 countries;

16 (D) guarantee the United States full access to
17 all data generated by ITER;

18 (E) enable United States researchers to propose
19 and carry out an equitable share of the experiments
20 at ITER;

21 (F) provide the United States with a role in all
22 collective decisionmaking related to ITER; and

23 (G) describe the process for discontinuing or
24 decommissioning ITER and any United States role
25 in those processes.

1 (c) PLAN.—The Secretary, in consultation with the
2 Fusion Energy Sciences Advisory Committee, shall de-
3 velop a plan for the participation of United States sci-
4 entists in ITER that shall include the United States re-
5 search agenda for ITER, methods to evaluate whether
6 ITER is promoting progress toward making fusion a reli-
7 able and affordable source of power, and a description of
8 how work at ITER will relate to other elements of the
9 United States fusion program. The Secretary shall request
10 a review of the plan by the National Academy of Sciences.

11 (d) LIMITATION.—No funds shall be expended for the
12 construction of ITER until the Secretary has transmitted
13 to the Congress—

14 (1) the agreement negotiated pursuant to sub-
15 section (b) and 120 days have elapsed since that
16 transmission;

17 (2) a report describing the management struc-
18 ture of ITER and providing a fixed dollar estimate
19 of the cost of United States participation in the con-
20 struction of ITER, and 120 days have elapsed since
21 that transmission;

22 (3) a report describing how United States par-
23 ticipation in ITER will be funded without reducing
24 funding for other programs in the Office of Science,

1 including other fusion programs, and 60 days have
2 elapsed since that transmission; and

3 (4) the plan required by subsection (c) (but not
4 the National Academy of Sciences review of that
5 plan), and 60 days have elapsed since that trans-
6 mission.

7 (e) DEFINITIONS.—In this section—

8 (1) the term “construction” means the physical
9 construction of the ITER facility, and the physical
10 construction, purchase, or manufacture of equipment
11 or components that are specifically designed for the
12 ITER facility, but does not mean the design of the
13 facility, equipment, or components; and

14 (2) the term “ITER” means the international
15 burning plasma fusion research project in which the
16 President announced United States participation on
17 January 30, 2003.

18 **SEC. 21612. PLAN FOR FUSION EXPERIMENT.**

19 (a) IN GENERAL.—If at any time during the negotia-
20 tions on ITER, the Secretary determines that construction
21 and operation of ITER is unlikely or infeasible, the Sec-
22 retary shall send to Congress, as part of the budget re-
23 quest for the following year, a plan for implementing the
24 domestic burning plasma experiment known as FIRE, in-
25 cluding costs and schedules for such a plan. The Secretary

1 shall refine such plan in full consultation with the Fusion
2 Energy Sciences Advisory Committee and shall also trans-
3 mit such plan to the National Academy of Sciences for
4 review.

5 (b) DEFINITIONS.—As used in this section—

6 (1) the term “ITER” has the meaning given
7 that term in section 21611; and

8 (2) the term “FIRE” means the Fusion Igni-
9 tion Research Experiment, the fusion research ex-
10 periment for which design work has been supported
11 by the Department as a possible alternative burning
12 plasma experiment in the event that ITER fails to
13 move forward.

14 **SEC. 21613. PLAN FOR FUSION ENERGY SCIENCES PRO-**
15 **GRAM.**

16 (a) DECLARATION OF POLICY.—It shall be the policy
17 of the United States to conduct research, development,
18 demonstration, and commercial application to provide for
19 the scientific, engineering, and commercial infrastructure
20 necessary to ensure that the United States is competitive
21 with other nations in providing fusion energy for its own
22 needs and the needs of other nations, including by dem-
23 onstrating electric power or hydrogen production for the
24 United States energy grid utilizing fusion energy at the
25 earliest date possible.

1 (b) FUSION ENERGY PLAN.—

2 (1) IN GENERAL.—Within 6 months after the
3 date of enactment of this Act, the Secretary shall
4 transmit to Congress a plan for carrying out the pol-
5 icy set forth in subsection (a), including cost esti-
6 mates, proposed budgets, potential international
7 partners, and specific programs for implementing
8 such policy.

9 (2) REQUIREMENTS OF PLAN.—Such plan shall
10 also ensure that—

11 (A) existing fusion research facilities are
12 more fully utilized;

13 (B) fusion science, technology, theory, ad-
14 vanced computation, modeling, and simulation
15 are strengthened;

16 (C) new magnetic and inertial fusion re-
17 search facilities are selected based on scientific
18 innovation, cost effectiveness, and their poten-
19 tial to advance the goal of practical fusion en-
20 ergy at the earliest date possible;

21 (D) such facilities that are selected are
22 funded at a cost-effective rate;

23 (E) communication of scientific results and
24 methods between the fusion energy science com-

1 munity and the broader scientific and tech-
2 nology communities is improved;

3 (F) inertial confinement fusion facilities
4 are utilized to the extent practicable for the
5 purpose of inertial fusion energy research and
6 development; and

7 (G) attractive alternative inertial and mag-
8 netic fusion energy approaches are more fully
9 explored.

10 (3) REPORT ON FUSION MATERIALS AND TECH-
11 NOLOGY PROJECT.—In addition, the plan required
12 by this subsection shall also address the status of,
13 and to the degree possible, the costs and schedules
14 for—

15 (A) the design and implementation of
16 international or national facilities for the test-
17 ing of fusion materials; and

18 (B) the design and implementation of
19 international or national facilities for the test-
20 ing and development of key fusion technologies.

21 **PART 3—SPALLATION NEUTRON SOURCE**

22 **SEC. 21621. DEFINITION.**

23 For the purposes of this part, the term “Spallation
24 Neutron Source” means Department Project 99–E–334,
25 Oak Ridge National Laboratory, Oak Ridge, Tennessee.

1 **SEC. 21622. REPORT.**

2 The Secretary shall report on the Spallation Neutron
3 Source as part of the Department's annual budget submis-
4 sion, including a description of the achievement of mile-
5 stones, a comparison of actual costs to estimated costs,
6 and any changes in estimated project costs or schedule.

7 **SEC. 21623. LIMITATIONS.**

8 The total amount obligated by the Department, in-
9 cluding prior year appropriations, for the Spallation Neu-
10 tron Source may not exceed—

- 11 (1) \$1,192,700,000 for costs of construction;
12 (2) \$219,000,000 for other project costs; and
13 (3) \$1,411,700,000 for total project cost.

14 **PART 4—MISCELLANEOUS**

15 **SEC. 21631. FACILITY AND INFRASTRUCTURE SUPPORT**
16 **FOR NONMILITARY ENERGY LABORATORIES.**

17 (a) FACILITY POLICY.—The Secretary shall develop
18 and implement a strategy for the nonmilitary energy lab-
19 oratories and facilities of the Office of Science. Such strat-
20 egy shall provide a cost-effective means for—

- 21 (1) maintaining existing facilities and infra-
22 structure, as needed;
23 (2) closing unneeded facilities;
24 (3) making facility modifications; and
25 (4) building new facilities.

26 (b) REPORT.—

1 (1) TRANSMITTAL.—The Secretary shall pre-
2 pare and transmit, along with the President’s budget
3 request to the Congress for fiscal year 2005, a re-
4 port containing the strategy developed under sub-
5 section (a).

6 (2) CONTENTS.—For each nonmilitary energy
7 laboratory and facility, such report shall contain—

8 (A) the current priority list of proposed fa-
9 cilities and infrastructure projects, including
10 cost and schedule requirements;

11 (B) a current ten-year plan that dem-
12 onstrates the reconfiguration of its facilities and
13 infrastructure to meet its missions and to ad-
14 dress its long-term operational costs and return
15 on investment;

16 (C) the total current budget for all facili-
17 ties and infrastructure funding; and

18 (D) the current status of each facilities
19 and infrastructure project compared to the
20 original baseline cost, schedule, and scope.

21 **SEC. 21632. RESEARCH REGARDING PRECIOUS METAL CA-**
22 **TALYSIS.**

23 From the amounts authorized to be appropriated to
24 the Secretary under section 21601, such sums as may be
25 necessary for each of the fiscal years 2004, 2005, and

1 2006 may be used to carry out research in the use of pre-
2 cious metals (excluding platinum, palladium, and rho-
3 dium) in catalysis.

4 **SEC. 21633. NANOTECHNOLOGY RESEARCH AND DEVELOP-**
5 **MENT.**

6 (a) IN GENERAL.—The Secretary, acting through the
7 Office of Science, shall implement a Nanotechnology Re-
8 search and Development Program to promote
9 nanotechnology research, development, demonstration,
10 education, technology transfer, and commercial applica-
11 tion activities as necessary to ensure continued United
12 States leadership in nanotechnology across scientific and
13 engineering disciplines.

14 (b) PROGRAM ACTIVITIES.—The activities of the
15 Nanotechnology Research and Development Program shall
16 be designed to—

17 (1) provide sustained support for
18 nanotechnology research and development through—

19 (A) grants to individual investigators and
20 interdisciplinary teams of investigators; and

21 (B) establishment of interdisciplinary re-
22 search centers and advanced technology user fa-
23 cilities;

1 (2) ensure that solicitation and evaluation of
2 proposals under the Program encourage interdiscipli-
3 nary research;

4 (3) expand education and training of under-
5 graduate and graduate students in interdisciplinary
6 nanotechnology science and engineering;

7 (4) accelerate the commercial application of
8 nanotechnology innovations in the private sector;

9 (5) ensure that societal and ethical concerns
10 will be addressed as the technology is developed by—

11 (A) establishing a research program to
12 identify societal and ethical concerns related to
13 nanotechnology, and ensuring that the results
14 of such research are widely disseminated; and

15 (B) integrating, insofar as possible, re-
16 search on societal and ethical concerns with
17 nanotechnology research and development; and

18 (6) ensure that the potential of nanotechnology
19 to produce or facilitate the production of clean, inex-
20 pensive energy is realized by supporting
21 nanotechnology energy applications research and de-
22 velopment.

23 (c) DEFINITIONS.—For the purposes of this sec-
24 tion—

1 (1) the term “nanotechnology” means science
2 and engineering aimed at creating materials, devices,
3 and systems at the atomic and molecular level; and

4 (2) the term “advanced technology user facil-
5 ity” means a nanotechnology research and develop-
6 ment facility supported, in whole or in part, by Fed-
7 eral funds that is open to all United States research-
8 ers on a competitive, merit-reviewed basis.

9 (d) REPORT.—Within 2 years after the date of enact-
10 ment of this Act, the Secretary shall transmit to the Con-
11 gress a report describing the projects to identify societal
12 and ethical concerns related to nanotechnology and the
13 funding provided to support these projects.

14 **SEC. 21634. ADVANCED SCIENTIFIC COMPUTING FOR EN-**
15 **ERGY MISSIONS.**

16 (a) IN GENERAL.—The Secretary, acting through the
17 Office of Science, shall support a program to advance the
18 Nation’s computing capability across a diverse set of
19 grand challenge computationally based science problems
20 related to departmental missions.

21 (b) DUTIES OF THE OFFICE OF SCIENCE.—In car-
22 rying out the program under this section, the Office of
23 Science shall—

24 (1) advance basic science through computation
25 by developing software to solve grand challenge

1 science problems on new generations of computing
2 platforms;

3 (2) enhance the foundations for scientific com-
4 puting by developing the basic mathematical and
5 computing systems software needed to take full ad-
6 vantage of the computing capabilities of computers
7 with peak speeds of 100 teraflops or more, some of
8 which may be unique to the scientific problem of in-
9 terest;

10 (3) enhance national collaboratory and net-
11 working capabilities by developing software to inte-
12 grate geographically separated researchers into ef-
13 fective research teams and to facilitate access to and
14 movement and analysis of large (petabyte) data sets;

15 (4) develop and maintain a robust scientific
16 computing hardware infrastructure to ensure that
17 the computing resources needed to address depart-
18 mental missions are available; and

19 (5) explore new computing approaches and
20 technologies that promise to advance scientific com-
21 puting.

22 (c) HIGH-PERFORMANCE COMPUTING ACT OF 1991
23 AMENDMENTS.—The High-Performance Computing Act
24 of 1991 is amended—

25 (1) in section 4 (15 U.S.C. 5503)—

1 (A) in paragraph (3)—

2 (i) by striking “means” and inserting
3 “and ‘networking and information tech-
4 nology’ mean”; and

5 (ii) by striking “(including vector
6 supercomputers and large scale parallel
7 systems)”; and

8 (B) in paragraph (4), by striking “packet
9 switched”; and

10 (2) in section 203 (15 U.S.C. 5523)—

11 (A) in subsection (a), by striking all after
12 “As part of the” and inserting “Networking
13 and Information Technology Research and De-
14 velopment Program, the Secretary of Energy
15 shall conduct basic and applied research in net-
16 working and information technology, with em-
17 phasis on—

18 “(1) supporting fundamental research in the
19 physical sciences and engineering, and energy appli-
20 cations;

21 “(2) providing supercomputer access and ad-
22 vanced communication capabilities and facilities to
23 scientific researchers; and

24 “(3) developing tools for distributed scientific
25 collaboration.”;

1 (B) in subsection (b), by striking “Pro-
2 gram” and inserting “Networking and Informa-
3 tion Technology Research and Development
4 Program”; and

5 (C) by amending subsection (e) to read as
6 follows:

7 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary of En-
9 ergy to carry out the Networking and Information Tech-
10 nology Research and Development Program such sums as
11 may be necessary for fiscal years 2004 through 2007.”.

12 (d) COORDINATION.—The Secretary shall ensure that
13 the program under this section is integrated and con-
14 sistent with—

15 (1) the Accelerated Strategic Computing Initia-
16 tive of the National Nuclear Security Administra-
17 tion; and

18 (2) other national efforts related to advanced
19 scientific computing for science and engineering.

20 (e) REPORT.—(1) Before undertaking any new initia-
21 tive to develop new advanced architecture for high-speed
22 computing, the Secretary, through the Director of the Of-
23 fice of Science, shall transmit a report to the Congress
24 describing—

1 (A) the expected duration and cost of the initia-
2 tive;

3 (B) the technical milestones the initiative is de-
4 signed to achieve;

5 (C) how institutions of higher education and
6 private firms will participate in the initiative; and

7 (D) why the goals of the initiative could not be
8 achieved through existing programs.

9 (2) No funds may be expended on any initiative de-
10 scribed in paragraph (1) until 30 days after the report
11 required by that paragraph is transmitted to the Congress.

12 **SEC. 21635. NITROGEN FIXATION.**

13 The Secretary, acting through the Office of Science,
14 shall support a program of research, development, dem-
15 onstration, and commercial application on biological nitro-
16 gen fixation, including plant genomics research relevant
17 to the development of commercial crop varieties with en-
18 hanced nitrogen fixation efficiency and ability.

19 **SEC. 21636. DEPARTMENT OF ENERGY SCIENCE AND TECH-**
20 **NOLOGY SCHOLARSHIP PROGRAM.**

21 (a) ESTABLISHMENT OF PROGRAM.—

22 (1) IN GENERAL.—The Secretary shall establish
23 a Department of Energy Science and Technology
24 Scholarship Program to award scholarships to indi-

1 viduals that is designed to recruit and prepare stu-
2 dents for careers in the Department.

3 (2) COMPETITIVE PROCESS.—Individuals shall
4 be selected to receive scholarships under this section
5 through a competitive process primarily on the basis
6 of academic merit, with consideration given to finan-
7 cial need and the goal of promoting the participation
8 of individuals identified in section 33 or 34 of the
9 Science and Engineering Equal Opportunities Act
10 (42 U.S.C. 1885a or 1885b).

11 (3) SERVICE AGREEMENTS.—To carry out the
12 Program the Secretary shall enter into contractual
13 agreements with individuals selected under para-
14 graph (2) under which the individuals agree to serve
15 as full-time employees of the Department, for the
16 period described in subsection (f)(1), in positions
17 needed by the Department and for which the individ-
18 uals are qualified, in exchange for receiving a schol-
19 arship.

20 (b) SCHOLARSHIP ELIGIBILITY.—In order to be eligi-
21 ble to participate in the Program, an individual must—

22 (1) be enrolled or accepted for enrollment as a
23 full-time student at an institution of higher edu-
24 cation in an academic program or field of study de-

1 scribed in the list made available under subsection
2 (d);

3 (2) be a United States citizen; and

4 (3) at the time of the initial scholarship award,
5 not be a Federal employee as defined in section
6 2105 of title 5 of the United States Code.

7 (c) APPLICATION REQUIRED.—An individual seeking
8 a scholarship under this section shall submit an applica-
9 tion to the Secretary at such time, in such manner, and
10 containing such information, agreements, or assurances as
11 the Secretary may require.

12 (d) ELIGIBLE ACADEMIC PROGRAMS.—The Secretary
13 shall make publicly available a list of academic programs
14 and fields of study for which scholarships under the Pro-
15 gram may be utilized, and shall update the list as nec-
16 essary.

17 (e) SCHOLARSHIP REQUIREMENT.—

18 (1) IN GENERAL.—The Secretary may provide a
19 scholarship under the Program for an academic year
20 if the individual applying for the scholarship has
21 submitted to the Secretary, as part of the applica-
22 tion required under subsection (c), a proposed aca-
23 demic program leading to a degree in a program or
24 field of study on the list made available under sub-
25 section (d).

1 (2) DURATION OF ELIGIBILITY.—An individual
2 may not receive a scholarship under this section for
3 more than 4 academic years, unless the Secretary
4 grants a waiver.

5 (3) SCHOLARSHIP AMOUNT.—The dollar
6 amount of a scholarship under this section for an
7 academic year shall be determined under regulations
8 issued by the Secretary, but shall in no case exceed
9 the cost of attendance.

10 (4) AUTHORIZED USES.—A scholarship pro-
11 vided under this section may be expended for tuition,
12 fees, and other authorized expenses as established by
13 the Secretary by regulation.

14 (5) CONTRACTS REGARDING DIRECT PAYMENTS
15 TO INSTITUTIONS.—The Secretary may enter into a
16 contractual agreement with an institution of higher
17 education under which the amounts provided for a
18 scholarship under this section for tuition, fees, and
19 other authorized expenses are paid directly to the in-
20 stitution with respect to which the scholarship is
21 provided.

22 (f) PERIOD OF OBLIGATED SERVICE.—

23 (1) DURATION OF SERVICE.—The period of
24 service for which an individual shall be obligated to
25 serve as an employee of the Department is, except

1 as provided in subsection (h)(2), 24 months for each
2 academic year for which a scholarship under this
3 section is provided.

4 (2) SCHEDULE FOR SERVICE.—(A) Except as
5 provided in subparagraph (B), obligated service
6 under paragraph (1) shall begin not later than 60
7 days after the individual obtains the educational de-
8 gree for which the scholarship was provided.

9 (B) The Secretary may defer the obligation of
10 an individual to provide a period of service under
11 paragraph (1) if the Secretary determines that such
12 a deferral is appropriate. The Secretary shall pre-
13 scribe the terms and conditions under which a serv-
14 ice obligation may be deferred through regulation.

15 (g) PENALTIES FOR BREACH OF SCHOLARSHIP
16 AGREEMENT.—

17 (1) FAILURE TO COMPLETE ACADEMIC TRAIN-
18 ING.—Scholarship recipients who fail to maintain a
19 high level of academic standing, as defined by the
20 Secretary by regulation, who are dismissed from
21 their educational institutions for disciplinary rea-
22 sons, or who voluntarily terminate academic training
23 before graduation from the educational program for
24 which the scholarship was awarded, shall be in
25 breach of their contractual agreement and, in lieu of

1 any service obligation arising under such agreement,
2 shall be liable to the United States for repayment
3 within 1 year after the date of default of all scholar-
4 ship funds paid to them and to the institution of
5 higher education on their behalf under the agree-
6 ment, except as provided in subsection (h)(2). The
7 repayment period may be extended by the Secretary
8 when determined to be necessary, as established by
9 regulation.

10 (2) FAILURE TO BEGIN OR COMPLETE THE
11 SERVICE OBLIGATION OR MEET THE TERMS AND
12 CONDITIONS OF DEFERMENT.—Scholarship recipi-
13 ents who, for any reason, fail to begin or complete
14 their service obligation after completion of academic
15 training, or fail to comply with the terms and condi-
16 tions of deferment established by the Secretary pur-
17 suant to subsection (f)(2)(B), shall be in breach of
18 their contractual agreement. When recipients breach
19 their agreements for the reasons stated in the pre-
20 ceding sentence, the recipient shall be liable to the
21 United States for an amount equal to—

22 (A) the total amount of scholarships re-
23 ceived by such individual under this section;
24 plus

1 (B) the interest on the amounts of such
2 awards which would be payable if at the time
3 the awards were received they were loans bear-
4 ing interest at the maximum legal prevailing
5 rate, as determined by the Treasurer of the
6 United States,
7 multiplied by 3.

8 (h) WAIVER OR SUSPENSION OF OBLIGATION.—

9 (1) DEATH OF INDIVIDUAL.—Any obligation of
10 an individual incurred under the Program (or a con-
11 tractual agreement thereunder) for service or pay-
12 ment shall be canceled upon the death of the indi-
13 vidual.

14 (2) IMPOSSIBILITY OR EXTREME HARDSHIP.—
15 The Secretary shall by regulation provide for the
16 partial or total waiver or suspension of any obliga-
17 tion of service or payment incurred by an individual
18 under the Program (or a contractual agreement
19 thereunder) whenever compliance by the individual is
20 impossible or would involve extreme hardship to the
21 individual, or if enforcement of such obligation with
22 respect to the individual would be contrary to the
23 best interests of the Government.

24 (i) DEFINITIONS.—In this section the following defi-
25 nitions apply:

1 (1) COST OF ATTENDANCE.—The term “cost of
2 attendance” has the meaning given that term in sec-
3 tion 472 of the Higher Education Act of 1965 (20
4 U.S.C. 1087*ll*).

5 (2) INSTITUTION OF HIGHER EDUCATION.—The
6 term “institution of higher education” has the
7 meaning given that term in section 101(a) of the
8 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

9 (3) PROGRAM.—The term “Program” means
10 the Department of Energy Science and Technology
11 Scholarship Program established under this section.

12 **PART 5—GENOMES TO LIFE**

13 **SEC. 21641. GENOMES TO LIFE.**

14 (a) PROGRAM.—

15 (1) ESTABLISHMENT.—The Secretary shall es-
16 tablish a research, development, and demonstration
17 program in genetics, protein science, and computa-
18 tional biology of microbes and plants to support the
19 energy and environmental mission of the Depart-
20 ment.

21 (2) GRANTS.—The program shall support indi-
22 vidual investigators and multidisciplinary teams of
23 investigators through competitive, merit-reviewed
24 grants.

1 (3) CONSULTATION.—In carrying out the pro-
2 gram, the Secretary shall consult with other Federal
3 agencies that conduct genetic and protein research.

4 (b) GOALS.—The program shall have the goal of de-
5 veloping technologies and methods based on the biological
6 functions of microbes and plants that —

7 (1) can facilitate the production of fuels, includ-
8 ing hydrogen;

9 (2) convert carbon dioxide to organic carbon;
10 and

11 (3) detoxify soils and water at Department fa-
12 cilities contaminated with heavy metals and radio-
13 logical materials.

14 (c) PLAN.—

15 (1) DEVELOPMENT OF PLAN.—Within one year
16 after the date of enactment of this Act, the Sec-
17 retary shall prepare and transmit to the Congress a
18 research plan describing how the program author-
19 ized pursuant to this section will be undertaken to
20 accomplish the program goals established in sub-
21 section (b).

22 (2) REVIEW OF PLAN.—The Secretary shall
23 contract with the National Academy of Sciences to
24 review the research plan developed under this sub-
25 section. The Secretary shall transmit the review to

1 the Congress not later than 6 months after trans-
 2 mittal of the research plan under paragraph (1),
 3 along with the Secretary's response to the rec-
 4 ommendations contained in the review.

5 (d) FACILITIES.—In carrying out the program under
 6 this section, the Secretary may construct, acquire, and op-
 7 erate facilities necessary to carry out this section.

8 (e) PROHIBITION ON BIOMEDICAL OR HUMAN SUB-
 9 JECT RESEARCH.—(1) In carrying out this program, the
 10 Secretary shall not conduct biomedical research.

11 (2) Nothing in this section shall authorize the Sec-
 12 retary to conduct any research or demonstrations—

13 (A) on human cells or human subjects; or

14 (B) designed to have any application with re-
 15 spect to human cells or human subjects.

16 **Subtitle G—Energy and** 17 **Environment**

18 **SEC. 21701. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) UNITED STATES-MEXICO ENERGY TECHNOLOGY
 20 COOPERATION.—The following sums are authorized to be
 21 appropriated to the Secretary to carry out activities under
 22 section 21702:

23 (1) For fiscal year 2004, \$5,000,000.

24 (2) For fiscal year 2005, \$6,000,000.

25 (3) For fiscal year 2006, \$6,000,000.

1 (4) For fiscal year 2007, \$6,000,000.

2 (b) WASTE REDUCTION AND USE OF ALTER-
3 NATIVES.—There are authorized to be appropriated to the
4 Secretary to carry out activities under section 21703,
5 \$500,000 for fiscal year 2004.

6 **SEC. 21702. UNITED STATES-MEXICO ENERGY TECHNOLOGY**
7 **COOPERATION.**

8 (a) PROGRAM.—The Secretary shall establish a re-
9 search, development, demonstration, and commercial ap-
10 plication program to be carried out in collaboration with
11 entities in Mexico and the United States to promote en-
12 ergy efficient, environmentally sound economic develop-
13 ment along the United States-Mexico border.

14 (b) PROGRAM MANAGEMENT.—The program under
15 subsection (a) shall be managed by the Department of En-
16 ergy Carlsbad Environmental Management Field Office.

17 (c) TECHNOLOGY TRANSFER.—In carrying out
18 projects and activities under this section, the Secretary
19 shall assess the applicability of technology developed under
20 the Environmental Management Science Program of the
21 Department.

22 (d) INTELLECTUAL PROPERTY.—In carrying out this
23 section, the Secretary shall comply with the requirements
24 of any agreement entered into between the United States
25 and Mexico regarding intellectual property protection.

1 **SEC. 21703. WASTE REDUCTION AND USE OF ALTER-**
2 **NATIVES.**

3 (a) GRANT AUTHORITY.—The Secretary is author-
4 ized to make a single grant to a qualified institution to
5 examine and develop the feasibility of burning post-con-
6 sumer carpet in cement kilns as an alternative energy
7 source. The purposes of the grant shall include deter-
8 mining—

9 (1) how post-consumer carpet can be burned
10 without disrupting kiln operations;

11 (2) the extent to which overall kiln emissions
12 may be reduced;

13 (3) the emissions of air pollutants and other
14 relevant environmental impacts; and

15 (4) how this process provides benefits to both
16 cement kiln operations and carpet suppliers.

17 (b) QUALIFIED INSTITUTION.—For the purposes of
18 subsection (a), a qualified institution is a research-inten-
19 sive institution of higher education with demonstrated ex-
20 pertise in the fields of fiber recycling and logistical mod-
21 eling of carpet waste collection and preparation.

22 **SEC. 21704. COAL GASIFICATION.**

23 The Secretary is authorized to provide loan guaran-
24 tees for a project to produce energy from a plant using
25 integrated gasification combined cycle technology of at
26 least 400 megawatts in capacity that produces power at

1 competitive rates in deregulated energy generation mar-
2 kets and that does not receive any subsidy (direct or indi-
3 rect) from ratepayers.

4 **SEC. 21705. PETROLEUM COKE GASIFICATION.**

5 The Secretary is authorized to provide loan guaran-
6 tees for at least one petroleum coke gasification
7 polygeneration project.

8 **SEC. 21706. OTHER BIOPOWER AND BIOENERGY.**

9 The Secretary shall conduct a program to assist in
10 the planning, design, and implementation of projects to
11 convert rice straw, rice hulls, soybean matter, poultry fat,
12 poultry waste, sugarcane bagasse, forest thinnings, and
13 barley grain into biopower and biofuels.

14 **SEC. 21707. COAL TECHNOLOGY LOAN.**

15 There are authorized to be appropriated to the Sec-
16 retary \$125,000,000 to provide a loan to the owner of the
17 experimental plant constructed under United States De-
18 partment of Energy cooperative agreement number DE-
19 FC22-91PC99544 on such terms and conditions as the
20 Secretary determines, including interest rates and upfront
21 payments.

22 **SEC. 21708. FUEL CELL TEST CENTER.**

23 (a) STUDY.—Not later than 1 year after the date of
24 enactment of this Act, the Secretary shall transmit to the
25 Congress a report on the results of a study of the estab-

1 lishment of a test center for next-generation fuel cells at
2 an institution of higher education that has available a con-
3 tinuous source of hydrogen and access to the electric
4 transmission grid. Such report shall include a conceptual
5 design for such test center and a projection of the costs
6 of establishing the test center.

7 (b) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary for car-
9 rying out this section \$500,000.

10 **SEC. 21709. FUEL CELL TRANSIT BUS DEMONSTRATION.**

11 The Secretary shall establish a transit bus dem-
12 onstration program to make competitive, merit-based
13 awards for five-year projects to demonstrate not more
14 than 12 fuel cell transit buses (and necessary infrastruc-
15 ture) in three geographically dispersed localities. In select-
16 ing projects under this section, the Secretary shall give
17 preference to projects that are most likely to mitigate con-
18 gestion and improve air quality. There are authorized to
19 be appropriated to the Secretary \$10,000,000 for each of
20 the fiscal years 2004 through 2007 for carrying out this
21 section.

22 **Subtitle H—Management**

23 **SEC. 21801. AVAILABILITY OF FUNDS.**

24 Funds authorized to be appropriated to the Depart-
25 ment under this title shall remain available until expended.

1 **SEC. 21802. COST SHARING.**

2 (a) RESEARCH AND DEVELOPMENT.—Except as oth-
3 erwise provided in this title, for research and development
4 programs carried out under this title, the Secretary shall
5 require a commitment from non-Federal sources of at
6 least 20 percent of the cost of the project. The Secretary
7 may reduce or eliminate the non-Federal requirement
8 under this subsection if the Secretary determines that the
9 research and development is of a basic or fundamental na-
10 ture.

11 (b) DEMONSTRATION AND COMMERCIAL APPLICA-
12 TION.—Except as otherwise provided in this title, the Sec-
13 retary shall require at least 50 percent of the costs directly
14 and specifically related to any demonstration or commer-
15 cial application project under this title to be provided from
16 non-Federal sources. The Secretary may reduce the non-
17 Federal requirement under this subsection if the Secretary
18 determines that the reduction is necessary and appropriate
19 considering the technological risks involved in the project
20 and is necessary to meet the objectives of this title.

21 (c) CALCULATION OF AMOUNT.—In calculating the
22 amount of the non-Federal commitment under subsection
23 (a) or (b), the Secretary may include personnel, services,
24 equipment, and other resources.

1 **SEC. 21803. MERIT REVIEW OF PROPOSALS.**

2 Awards of funds authorized under this title shall be
3 made only after an impartial review of the scientific and
4 technical merit of the proposals for such awards has been
5 carried out by or for the Department.

6 **SEC. 21804. EXTERNAL TECHNICAL REVIEW OF DEPART-**
7 **MENTAL PROGRAMS.**

8 (a) NATIONAL ENERGY RESEARCH AND DEVELOP-
9 MENT ADVISORY BOARDS.—(1) The Secretary shall estab-
10 lish one or more advisory boards to review Department
11 research, development, demonstration, and commercial ap-
12 plication programs in the following areas:

13 (A) Energy efficiency.

14 (B) Renewable energy.

15 (C) Nuclear energy.

16 (D) Fossil energy.

17 (2) The Secretary may designate an existing advisory
18 board within the Department to fulfill the responsibilities
19 of an advisory board under this subsection, and may enter
20 into appropriate arrangements with the National Academy
21 of Sciences to establish such an advisory board.

22 (b) OFFICE OF SCIENCE ADVISORY COMMITTEES.—

23 (1) UTILIZATION OF EXISTING COMMITTEES.—

24 The Secretary shall continue to use the scientific
25 program advisory committees chartered under the
26 Federal Advisory Committee Act by the Office of

1 Science to oversee research and development pro-
2 grams under that Office.

3 (2) SCIENCE ADVISORY COMMITTEE.—

4 (A) ESTABLISHMENT.—There shall be in
5 the Office of Science a Science Advisory Com-
6 mittee that includes the chairs of each of the
7 advisory committees described in paragraph (1).

8 (B) RESPONSIBILITIES.—The Science Ad-
9 visory Committee shall—

10 (i) serve as the science advisor to the
11 Assistant Secretary for Science created
12 under section 209 of the Department of
13 Energy Organization Act, as added by sec-
14 tion 22001 of this Act;

15 (ii) advise the Assistant Secretary
16 with respect to the well-being and manage-
17 ment of the National Laboratories and sin-
18 gle-purpose research facilities;

19 (iii) advise the Assistant Secretary
20 with respect to education and workforce
21 training activities required for effective
22 short-term and long-term basic and applied
23 research activities of the Office of Science;
24 and

1 (iv) advise the Assistant Secretary
2 with respect to the well being of the uni-
3 versity research programs supported by the
4 Office of Science.

5 (c) MEMBERSHIP.—Each advisory board under this
6 section shall consist of persons with appropriate expertise
7 representing a diverse range of interests.

8 (d) MEETINGS AND PURPOSES.—Each advisory
9 board under this section shall meet at least semi-annually
10 to review and advise on the progress made by the respec-
11 tive research, development, demonstration, and commer-
12 cial application program or programs. The advisory board
13 shall also review the measurable cost and performance-
14 based goals for such programs as established under sec-
15 tion 20002, and the progress on meeting such goals.

16 (e) PERIODIC REVIEWS AND ASSESSMENTS.—The
17 Secretary shall enter into appropriate arrangements with
18 the National Academy of Sciences to conduct periodic re-
19 views and assessments of the programs authorized by this
20 title, the measurable cost and performance-based goals for
21 such programs as established under section 20002, if any,
22 and the progress on meeting such goals. Such reviews and
23 assessments shall be conducted every 5 years, or more
24 often as the Secretary considers necessary, and the Sec-

1 retary shall transmit to the Congress reports containing
2 the results of all such reviews and assessments.

3 **SEC. 21805. IMPROVED COORDINATION OF TECHNOLOGY**
4 **TRANSFER ACTIVITIES.**

5 (a) **TECHNOLOGY TRANSFER COORDINATOR.**—The
6 Secretary shall designate a Technology Transfer Coordi-
7 nator to perform oversight of and policy development for
8 technology transfer activities at the Department. The
9 Technology Transfer Coordinator shall coordinate the ac-
10 tivities of the Technology Transfer Working Group, and
11 shall oversee the expenditure of funds allocated to the
12 Technology Transfer Working Group, and shall coordinate
13 with each technology partnership ombudsman appointed
14 under section 11 of the Technology Transfer Commer-
15 cialization Act of 2000 (42 U.S.C. 7261c).

16 (b) **TECHNOLOGY TRANSFER WORKING GROUP.**—
17 The Secretary shall establish a Technology Transfer
18 Working Group, which shall consist of representatives of
19 the National Laboratories and single-purpose research fa-
20 cilities, to—

21 (1) coordinate technology transfer activities oc-
22 curring at National Laboratories and single-purpose
23 research facilities;

24 (2) exchange information about technology
25 transfer practices, including alternative approaches

1 to resolution of disputes involving intellectual prop-
2 erty rights and other technology transfer matters;
3 and

4 (3) develop and disseminate to the public and
5 prospective technology partners information about
6 opportunities and procedures for technology transfer
7 with the Department, including those related to al-
8 ternative approaches to resolution of disputes involv-
9 ing intellectual property rights and other technology
10 transfer matters.

11 (c) TECHNOLOGY TRANSFER RESPONSIBILITY.—
12 Nothing in this section shall affect the technology transfer
13 responsibilities of Federal employees under the Stevenson-
14 Wydler Technology Innovation Act of 1980.

15 **SEC. 21806. SMALL BUSINESS ADVOCACY AND ASSISTANCE.**

16 (a) SMALL BUSINESS ADVOCATE.—The Secretary
17 shall require the Director of each National Laboratory,
18 and may require the Director of a single-purpose research
19 facility, to designate a small business advocate to—

20 (1) increase the participation of small business
21 concerns, including socially and economically dis-
22 advantaged small business concerns, in procurement,
23 collaborative research, technology licensing, and
24 technology transfer activities conducted by the Na-
25 tional Laboratory or single-purpose research facility;

1 (2) report to the Director of the National Lab-
2 oratory or single-purpose research facility on the ac-
3 tual participation of small business concerns in pro-
4 curement and collaborative research along with rec-
5 ommendations, if appropriate, on how to improve
6 participation;

7 (3) make available to small business concerns
8 training, mentoring, and clear, up-to-date informa-
9 tion on how to participate in the procurement and
10 collaborative research, including how to submit effec-
11 tive proposals, and information related to alternative
12 approaches to resolution of disputes involving intel-
13 lectual property rights and other technology transfer
14 matters;

15 (4) increase the awareness inside the National
16 Laboratory or single-purpose research facility of the
17 capabilities and opportunities presented by small
18 business concerns; and

19 (5) establish guidelines for the program under
20 subsection (b) and report on the effectiveness of
21 such program to the Director of the National Lab-
22 oratory or single-purpose research facility.

23 (b) ESTABLISHMENT OF SMALL BUSINESS ASSIST-
24 ANCE PROGRAM.—The Secretary shall require the Direc-
25 tor of each National Laboratory, and may require the Di-

1 rector of a single-purpose research facility, to establish a
2 program to provide small business concerns—

3 (1) assistance directed at making them more ef-
4 fective and efficient subcontractors or suppliers to
5 the National Laboratory or single-purpose research
6 facility; or

7 (2) general technical assistance, the cost of
8 which shall not exceed \$10,000 per instance of as-
9 sistance, to improve the small business concern's
10 products or services.

11 (c) USE OF FUNDS.—None of the funds expended
12 under subsection (b) may be used for direct grants to the
13 small business concerns.

14 (d) DEFINITIONS.—In this section:

15 (1) SMALL BUSINESS CONCERN.—The term
16 “small business concern” has the meaning given
17 such term in section 3 of the Small Business Act
18 (15 U.S.C. 632).

19 (2) SOCIALLY AND ECONOMICALLY DISADVAN-
20 TAGED SMALL BUSINESS CONCERNS.—The term “so-
21 cially and economically disadvantaged small business
22 concerns” has the meaning given such term in sec-
23 tion 8(a)(4) of the Small Business Act (15 U.S.C.
24 637(a)(4)).

1 **SEC. 21807. MOBILITY OF SCIENTIFIC AND TECHNICAL PER-**
2 **SONNEL.**

3 Not later than 2 years after the date of enactment
4 of this section, the Secretary shall transmit a report to
5 the Congress identifying any policies or procedures of a
6 contractor operating a National Laboratory or single-pur-
7 pose research facility that create disincentives to the tem-
8 porary transfer of scientific and technical personnel
9 among the contractor-operated National Laboratories or
10 contractor-operated single-purpose research facilities.

11 **SEC. 21808. NATIONAL ACADEMY OF SCIENCES REPORT.**

12 Within 90 days after the date of enactment of this
13 Act, the Secretary shall enter into an arrangement with
14 the National Academy of Sciences for the Academy to—

15 (1) conduct studies on—

16 (A) the obstacles to accelerating the com-
17 mercial application of energy technology; and

18 (B) the adequacy of Department policies
19 and procedures for, and oversight of, technology
20 transfer-related disputes between contractors of
21 the Department and the private sector; and

22 (2) report to the Congress on recommendations
23 developed as a result of the studies.

24 **SEC. 21809. OUTREACH.**

25 The Secretary shall ensure that each program au-
26 thorized by this title includes an outreach component to

1 provide information, as appropriate, to manufacturers,
2 consumers, engineers, architects, builders, energy service
3 companies, institutions of higher education, facility plan-
4 ners and managers, State and local governments, and
5 other entities.

6 **SEC. 21810. LIMITS ON USE OF FUNDS.**

7 (a) COMPETITIVE PROCEDURE REQUIREMENT.—
8 None of the funds authorized to be appropriated to the
9 Secretary by this title may be used to award a manage-
10 ment and operating contract for a nonmilitary energy lab-
11 oratory of the Department unless such contract is com-
12 petitively awarded or the Secretary grants, on a case-by-
13 case basis, a waiver to allow for such a deviation. The Sec-
14 retary may not delegate the authority to grant such a
15 waiver.

16 (b) CONGRESSIONAL NOTICE.—At least 2 months be-
17 fore a contract award for which the Secretary intends to
18 grant such a waiver, the Secretary shall submit to the
19 Congress a report notifying the Congress of the waiver
20 and setting forth the reasons for the waiver.

21 **SEC. 21811. REPROGRAMMING.**

22 (a) DISTRIBUTION REPORT.—Not later than 60 days
23 after the date of the enactment of an Act appropriating
24 amounts authorized under this title, the Secretary shall
25 transmit to the appropriate authorizing committees of the

1 Congress a report explaining how such amounts will be
2 distributed among the authorizations contained in this
3 title.

4 (b) PROHIBITION.—(1) No amount identified under
5 subsection (a) shall be reprogrammed if such reprogram-
6 ming would result in an obligation which changes an indi-
7 vidual distribution required to be reported under sub-
8 section (a) by more than 5 percent unless the Secretary
9 has transmitted to the appropriate authorizing committees
10 of the Congress a report described in subsection (c) and
11 a period of 30 days has elapsed after such committees re-
12 ceive the report.

13 (2) In the computation of the 30-day period described
14 in paragraph (1), there shall be excluded any day on which
15 either House of Congress is not in session because of an
16 adjournment of more than 3 days to a day certain.

17 (c) REPROGRAMMING REPORT.—A report referred to
18 in subsection (b)(1) shall contain a full and complete
19 statement of the action proposed to be taken and the facts
20 and circumstances relied on in support of the proposed
21 action.

22 **SEC. 21812. CONSTRUCTION WITH OTHER LAWS.**

23 Except as otherwise provided in this title, the Sec-
24 retary shall carry out the research, development, dem-
25 onstration, and commercial application programs,

1 projects, and activities authorized by this title in accord-
2 ance with the applicable provisions of the Atomic Energy
3 Act of 1954 (42 U.S.C. et seq.), the Federal Nonnuclear
4 Research and Development Act of 1974 (42 U.S.C. 5901
5 et seq.), the Energy Policy Act of 1992 (42 U.S.C. 13201
6 et seq.), the Stevenson-Wydler Technology Innovation Act
7 of 1980 (15 U.S.C. 3701 et seq.), chapter 18 of title 35,
8 United States Code (commonly referred to as the Bayh-
9 Dole Act), and any other Act under which the Secretary
10 is authorized to carry out such activities.

11 **SEC. 21813. UNIVERSITY COLLABORATION.**

12 Not later than 2 years after the date of enactment
13 of this Act, the Secretary shall transmit to the Congress
14 a report that examines the feasibility of promoting collabo-
15 rations between large institutions of higher education and
16 small institutions of higher education through grants, con-
17 tracts, and cooperative agreements made by the Secretary
18 for energy projects. The Secretary shall also consider pro-
19 viding incentives for the inclusion of small institutions of
20 higher education, including minority-serving institutions,
21 in energy research grants, contracts, and cooperative
22 agreements.

1 **SEC. 21814. FEDERAL LABORATORY EDUCATIONAL PART-**
2 **NERS.**

3 (a) DISTRIBUTION OF ROYALTIES RECEIVED BY
4 FEDERAL AGENCIES.—Section 14(a)(1)(B)(v) of the Ste-
5 venson-Wydlar Technology Innovation Act of 1980 (15
6 U.S.C. 3710c(a)(1)(B)(v)), is amended to read as follows:

7 “(v) for scientific research and develop-
8 ment and for educational assistance and other
9 purposes consistent with the missions and ob-
10 jectives of the Department of Energy and the
11 laboratory.”.

12 (b) COOPERATIVE RESEARCH AND DEVELOPMENT
13 AGREEMENTS.—Section 12(b)(5)(C) of the Stevenson-
14 Wydlar Technology Innovation Act of 1980 (15 U.S.C.
15 3710a(b)(5)(C)) is amended to read as follows:

16 “(C) for scientific research and development
17 and for educational assistance consistent with the
18 missions and objectives of the Department of Energy
19 and the laboratory.”.

20 **SEC. 21815. INTERAGENCY COOPERATION.**

21 The Secretary shall enter into discussions with the
22 Administrator of the National Aeronautics and Space Ad-
23 ministration with the goal of reaching an interagency
24 working agreement between the 2 agencies that would
25 make the National Aeronautics and Space Administra-
26 tion’s expertise in energy, gained from its existing and

1 planned programs, more readily available to the relevant
2 research, development, demonstration, and commercial ap-
3 plications programs of the Department. Technologies to
4 be discussed should include the National Aeronautics and
5 Space Administration's modeling, research, development,
6 testing, and evaluation of new energy technologies, includ-
7 ing solar, wind, fuel cells, and hydrogen storage and dis-
8 tribution.

9 **TITLE II—DEPARTMENT OF** 10 **ENERGY MANAGEMENT**

11 **SEC. 22001. EXTERNAL REGULATION OF DEPARTMENT OF** 12 **ENERGY.**

13 (a) DEPARTMENT OF ENERGY REPORT.—Not later
14 than 18 months after the date of enactment of this Act,
15 the Secretary shall transmit to the Congress a report on
16 the assumption by the Nuclear Regulatory Commission of
17 the Department's regulatory and enforcement responsibil-
18 ities with respect to nuclear safety, and the assumption
19 by the Occupational Safety and Health Administration of
20 the Department's regulatory and enforcement responsibil-
21 ities with respect to occupational safety and health, at any
22 nonmilitary energy laboratory owned or operated by the
23 Department. The report shall include—

24 (1) a detailed transition plan, drafted in coordi-
25 nation with the Nuclear Regulatory Commission and

1 the Occupational Safety and Health Administration,
2 for termination of self-regulation authority, includ-
3 ing the activities to be coordinated with the Nuclear
4 Regulatory Commission and the Occupational Safety
5 and Health Administration;

6 (2) a description of any issues that would re-
7 quire resolution with the Nuclear Regulatory Com-
8 mission, the Occupational Safety and Health Admin-
9 istration, or other external regulators; and

10 (3) an estimate of—

11 (A) the annual cost of administering and
12 implementing external regulation of the nuclear
13 safety and occupational safety and health re-
14 sponsibilities at nonmilitary energy laboratories
15 owned or operated by the Department;

16 (B) the number of Federal and contractor
17 employees required to administer and imple-
18 ment such external regulation; and

19 (C) the extent and schedule by which the
20 Department and the staffs at its nonmilitary
21 energy laboratories would be reduced, and the
22 anticipated cost savings from that reduction.

23 (b) GENERAL ACCOUNTING OFFICE REPORTING RE-
24 QUIREMENT.—The Comptroller General shall provide a re-
25 port not later than 20 months after the date of enactment

1 of this Act that compares the Department’s transition
2 plan with the Department’s implementation of nuclear
3 safety and occupational safety and health responsibilities
4 under sections 234A and 234C of the Atomic Energy Act
5 of 1954.

6 **SEC. 22002. IMPROVED COORDINATION AND MANAGEMENT**
7 **OF CIVILIAN SCIENCE AND TECHNOLOGY**
8 **PROGRAMS.**

9 (a) RECONFIGURATION OF POSITION OF DIRECTOR
10 OF THE OFFICE OF SCIENCE.—Section 209 of the Depart-
11 ment of Energy Organization Act (42 U.S.C. 7139) is
12 amended by—

13 (1) striking “a Director” and inserting “an As-
14 sistant Secretary, in addition to those appointed
15 under section 203(a),”; and

16 (2) striking “Director” and inserting “Assistant
17 Secretary”.

18 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

19 (1) Section 5315 of title 5, United States Code, is amend-
20 ed by—

21 (A) striking “Director, Office of Science, De-
22 partment of Energy.”; and

23 (B) striking “Assistant Secretaries of Energy
24 (6)” and inserting “Assistant Secretaries of Energy
25 (7)”.

1 (2) The table of contents for the Department of En-
2 ergy Organization Act (42 U.S.C. 7101 note) is amend-
3 ed—

4 (A) by striking “Section 209” and inserting
5 “Sec. 209”;

6 (B) by striking “213.” and inserting “Sec.
7 213.”;

8 (C) by striking “214.” and inserting “Sec.
9 214.”;

10 (D) by striking “215.” and inserting “Sec.
11 215.”; and

12 (E) by striking “216.” and inserting “Sec.
13 216.”.

14 **SEC. 22003. REPORT ON EQUAL EMPLOYMENT OPPOR-**
15 **TUNITY PRACTICES.**

16 Not later than twelve months after the date of enact-
17 ment of this Act, and biennially thereafter, the Secretary
18 shall transmit to Congress a report on the equal employ-
19 ment opportunity practices at Department of Energy Na-
20 tional laboratories. Such report shall include—

21 (1) a thorough review of each laboratory con-
22 tractor’s equal employment opportunity policies, in-
23 cluding promotion to management and professional
24 positions and pay raises;

1 (2) a statistical report on complaints and their
2 disposition in the laboratories;

3 (3) a description of how equal employment op-
4 portunity practices at the laboratories are treated in
5 the contract and in calculating award fees for each
6 contractor;

7 (4) a summary of disciplinary actions and their
8 disposition by either the Department or the relevant
9 contractors for each laboratory;

10 (5) a summary of outreach efforts to attract
11 women and minorities to the laboratories;

12 (6) a summary of efforts to retain women and
13 minorities in the laboratories; and

14 (7) a summary of collaboration efforts with the
15 Office of Federal Contract Compliance Programs to
16 improve equal employment opportunity practices at
17 the laboratories.

18 **SEC. 22004. SENSE OF CONGRESS.**

19 It is the sense of the Congress that—

20 (1) the Secretary of Energy should develop and
21 implement more stringent procurement and inven-
22 tory controls, including controls on the purchase
23 card program, to prevent waste, fraud, and abuse of
24 taxpayer funds by employees and contractors of the
25 Department of Energy; and

1 (2) the Department’s Inspector General should
2 continue to closely review purchase card purchases
3 and other procurement and inventory practices at
4 the Department.

5 **TITLE III—CLEAN SCHOOL**
6 **BUSES**

7 **SEC. 23001. ESTABLISHMENT OF PILOT PROGRAM.**

8 (a) ESTABLISHMENT.—The Secretary of Energy, in
9 consultation with the Administrator of the Environmental
10 Protection Agency, shall establish a pilot program for
11 awarding grants on a competitive basis to eligible entities
12 for the demonstration and commercial application of alter-
13 native fuel school buses and ultra-low sulfur diesel school
14 buses.

15 (b) REQUIREMENTS.—Not later than 3 months after
16 the date of the enactment of this Act, the Secretary shall
17 establish and publish in the Federal register grant require-
18 ments on eligibility for assistance, and on implementation
19 of the program established under subsection (a), including
20 certification requirements to ensure compliance with this
21 title.

22 (c) SOLICITATION.—Not later than 6 months after
23 the date of the enactment of this Act, the Secretary shall
24 solicit proposals for grants under this section.

1 (d) ELIGIBLE RECIPIENTS.—A grant shall be award-
2 ed under this section only—

3 (1) to a local or State governmental entity re-
4 sponsible for providing school bus service to one or
5 more public school systems or responsible for the
6 purchase of school buses; or

7 (2) to a contracting entity that provides school
8 bus service to one or more public school systems, if
9 the grant application is submitted jointly with the
10 school system or systems which the buses will serve.

11 (e) TYPES OF GRANTS.—

12 (1) IN GENERAL.—Grants under this section
13 shall be for the demonstration and commercial appli-
14 cation of technologies to facilitate the use of alter-
15 native fuel school buses and ultra-low sulfur diesel
16 school buses in lieu of buses manufactured before
17 model year 1977 and diesel-powered buses manufac-
18 tured before model year 1991.

19 (2) NO ECONOMIC BENEFIT.—Other than the
20 receipt of the grant, a recipient of a grant under this
21 section may not receive any economic benefit in con-
22 nection with the receipt of the grant.

23 (3) PRIORITY OF GRANT APPLICATIONS.—The
24 Secretary shall give priority to awarding grants to
25 applicants who can demonstrate the use of alter-

1 native fuel buses and ultra-low sulfur diesel school
2 buses in lieu of buses manufactured before model
3 year 1977.

4 (f) CONDITIONS OF GRANT.—A grant provided under
5 this section shall include the following conditions:

6 (1) All buses acquired with funds provided
7 under the grant shall be operated as part of the
8 school bus fleet for which the grant was made for a
9 minimum of 5 years.

10 (2) Funds provided under the grant may only
11 be used—

12 (A) to pay the cost, except as provided in
13 paragraph (3), of new alternative fuel school
14 buses or ultra-low sulfur diesel school buses, in-
15 cluding State taxes and contract fees; and

16 (B) to provide—

17 (i) up to 10 percent of the price of the
18 alternative fuel buses acquired, for nec-
19 essary alternative fuel infrastructure if the
20 infrastructure will only be available to the
21 grant recipient; and

22 (ii) up to 15 percent of the price of
23 the alternative fuel buses acquired, for nec-
24 essary alternative fuel infrastructure if the

1 infrastructure will be available to the grant
2 recipient and to other bus fleets.

3 (3) The grant recipient shall be required to pro-
4 vide at least the lesser of 15 percent of the total cost
5 of each bus received or \$15,000 per bus.

6 (4) In the case of a grant recipient receiving a
7 grant to demonstrate ultra-low sulfur diesel school
8 buses, the grant recipient shall be required to pro-
9 vide documentation to the satisfaction of the Sec-
10 retary that diesel fuel containing sulfur at not more
11 than 15 parts per million is available for carrying
12 out the purposes of the grant, and a commitment by
13 the applicant to use such fuel in carrying out the
14 purposes of the grant.

15 (g) BUSES.—Funding under a grant made under this
16 section may be used to demonstrate the use only of new
17 alternative fuel school buses or ultra-low sulfur diesel
18 school buses—

19 (1) with a gross vehicle weight of greater than
20 14,000 pounds;

21 (2) that are powered by a heavy duty engine;

22 (3) that, in the case of alternative fuel school
23 buses manufactured in model years 2003 through
24 2006, emit not more than 1.8 grams per brake
25 horsepower-hour of nonmethane hydrocarbons and

1 oxides of nitrogen and .01 grams per brake horse-
2 power-hour of particulate matter; and

3 (4) that, in the case of ultra-low sulfur diesel
4 school buses, emit not more than—

5 (A) for buses manufactured in model year
6 2003, 3.0 grams per brake horsepower-hour of
7 oxides of nitrogen and .01 grams per brake
8 horsepower-hour of particulate matter; and

9 (B) for buses manufactured in model years
10 2004 through 2006, 2.5 grams per brake horse-
11 power-hour of nonmethane hydrocarbons and
12 oxides of nitrogen and .01 grams per brake
13 horsepower-hour of particulate matter,

14 except that under no circumstances shall buses be
15 acquired under this section that emit nonmethane
16 hydrocarbons, oxides of nitrogen, or particulate mat-
17 ter at a rate greater than the best performing tech-
18 nology of the same class of ultra-low sulfur diesel
19 school buses commercially available at the time the
20 grant is made.

21 (h) DEPLOYMENT AND DISTRIBUTION.—The Sec-
22 retary shall seek to the maximum extent practicable to
23 achieve nationwide deployment of alternative fuel school
24 buses and ultra-low sulfur diesel school buses through the
25 program under this section, and shall ensure a broad geo-

1 graphic distribution of grant awards, with a goal of no
2 State receiving more than 10 percent of the grant funding
3 made available under this section for a fiscal year.

4 (i) LIMIT ON FUNDING.—The Secretary shall provide
5 not less than 20 percent and not more than 25 percent
6 of the grant funding made available under this section for
7 any fiscal year for the acquisition of ultra-low sulfur diesel
8 school buses.

9 (j) REDUCTION OF SCHOOL BUS IDLING.—Each
10 local educational agency (as defined in section 9101 of the
11 Elementary and Secondary Education Act of 1965 (20
12 U.S.C. 7801)) that receives Federal funds under the Ele-
13 mentary and Secondary Education Act of 1965 (20 U.S.C.
14 6301 et seq.) is encouraged to develop a policy, consistent
15 with the health, safety, and welfare of students and the
16 proper operation and maintenance of school buses, to re-
17 duce the incidence of unnecessary school bus idling at
18 schools when picking up and unloading students.

19 (k) ANNUAL REPORT.—Not later than January 31
20 of each year, the Secretary of Energy shall provide a re-
21 port evaluating implementation of the program under this
22 title to the Congress. Such report shall include the total
23 number of grant applications received, the number and
24 types of alternative fuel buses and ultra-low sulfur diesel
25 school buses requested in grant applications, a list of

1 grants awarded and the criteria used to select the grant
2 recipients, certified engine emission levels of all buses pur-
3 chased under the program, and any other information the
4 Secretary considers appropriate.

5 (l) DEFINITIONS.—For purposes of this section—

6 (1) the term “alternative fuel school bus”
7 means a bus powered substantially by electricity (in-
8 cluding electricity supplied by a fuel cell), or by liq-
9 uefied natural gas, compressed natural gas, liquefied
10 petroleum gas, hydrogen, propane, or methanol or
11 ethanol at no less than 85 percent by volume;

12 (2) the term “idling” means operating an en-
13 gine while remaining stationary for more than ap-
14 proximately 15 minutes, except that such term does
15 not apply to routine stoppages associated with traf-
16 fic movement or congestion; and

17 (3) the term “ultra-low sulfur diesel school
18 bus” means a school bus powered by diesel fuel
19 which contains sulfur at not more than 15 parts per
20 million.

21 **SEC. 23002. FUEL CELL BUS DEVELOPMENT AND DEM-**
22 **ONSTRATION PROGRAM.**

23 (a) ESTABLISHMENT OF PROGRAM.—The Secretary
24 shall establish a program for entering into cooperative
25 agreements with private sector fuel cell bus developers for

1 the development of fuel cell-powered school buses, and
2 subsequently with not less than 2 units of local govern-
3 ment using natural gas-powered school buses and such
4 private sector fuel cell bus developers to demonstrate the
5 use of fuel cell-powered school buses.

6 (b) COST SHARING.—The non-Federal contribution
7 for activities funded under this section shall be not less
8 than—

9 (1) 20 percent for fuel infrastructure develop-
10 ment activities; and

11 (2) 50 percent for demonstration activities and
12 for development activities not described in paragraph
13 (1).

14 (c) FUNDING.—No more than \$25,000,000 of the
15 amounts authorized under section 23004(a) may be used
16 for carrying out this section for the period encompassing
17 fiscal years 2004 through 2006.

18 (d) REPORTS TO CONGRESS.—Not later than 3 years
19 after the date of the enactment of this Act, and not later
20 than October 1, 2006, the Secretary shall transmit to the
21 Congress a report that—

22 (1) evaluates the process of converting natural
23 gas infrastructure to accommodate fuel cell-powered
24 school buses; and

1 (2) assesses the results of the development and
2 demonstration program under this section.

3 **SEC. 23003. DIESEL RETROFIT PROGRAM.**

4 (a) ESTABLISHMENT.—The Administrator of the En-
5 vironmental Protection Agency and the Secretary shall es-
6 tablish a pilot program for awarding grants on a competi-
7 tive basis to eligible recipients for the demonstration and
8 commercial application of retrofit technologies for diesel
9 school buses.

10 (b) ELIGIBLE RECIPIENTS.—A grant shall be award-
11 ed under this section only—

12 (1) to a local or State governmental entity re-
13 sponsible for providing school bus service to one or
14 more public school systems; or

15 (2) to a contracting entity that provides school
16 bus service to one or more public school systems, if
17 the grant application is submitted jointly with the
18 school system or systems which the buses will serve.

19 (c) CONDITIONS OF GRANT.—A grant provided under
20 this section may be used only to demonstrate the use of
21 retrofit emissions-control technology on diesel buses
22 that—

23 (1) operate on ultra-low sulfur diesel fuel; and

24 (2) were manufactured in model year 1991 or
25 later.

1 (d) VERIFICATION.—Not later than 3 months after
 2 the date of enactment of this Act, the Administrator shall
 3 publish in the Federal Register procedures to verify—

4 (1) the retrofit emissions-control technology to
 5 be demonstrated; and

6 (2) that buses on which retrofit emissions-con-
 7 trol technology are to be demonstrated will operate
 8 on diesel fuel containing not more than 15 parts per
 9 million of sulfur.

10 **SEC. 23004. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) SCHOOL BUS GRANTS.—There are authorized to
 12 be appropriated to the Secretary for carrying out this title,
 13 to remain available until expended—

14 (1) \$90,000,000 for fiscal year 2004;

15 (2) \$100,000,000 for fiscal year 2005; and

16 (3) \$110,000,000 for fiscal year 2006.

17 (b) RETROFIT GRANTS.—There are authorized to be
 18 appropriated to the Administrator of the Environmental
 19 Protection Agency and the Secretary such sums as may
 20 be necessary for carrying out section 23003.

21 **DIVISION C—RESOURCES**

22 **TITLE I—INDIAN ENERGY**

23 **SEC. 30101. INDIAN ENERGY.**

24 Title XXVI of the Energy Policy Act of 1992 (25
 25 U.S.C. 3501 et seq.) is amended to read as follows:

1 **“TITLE XXVI—INDIAN ENERGY**

2 **“SEC. 2601. DEFINITIONS.**

3 “In this title:

4 “(1) INDIAN.—The term ‘Indian’ means an in-
5 dividual member of an Indian tribe who owns land
6 or an interest in land, the title to which land—

7 “(A) is held in trust by the United States;

8 or

9 “(B) is subject to a restriction against
10 alienation imposed by the United States.

11 “(2) INDIAN LAND.—The term ‘Indian land’
12 means—

13 “(A) any land located within the bound-
14 aries of an Indian reservation, pueblo, or
15 rancheria; or

16 “(B) any land not located within the
17 boundaries of an Indian reservation, pueblo, or
18 rancheria, the title to which is held—

19 “(i) in trust by the United States for
20 the benefit of an Indian tribe;

21 “(ii) by an Indian tribe, subject to re-
22 striction by the United States against
23 alienation; or

24 “(iii) by a dependent Indian commu-
25 nity.

1 “(3) INDIAN RESERVATION.—The term ‘Indian
2 reservation’ includes—

3 “(A) an Indian reservation in existence as
4 of the date of the enactment of this paragraph;

5 “(B) a public domain Indian allotment;

6 “(C) a former reservation in the State of
7 Oklahoma; and

8 “(D) a dependent Indian community lo-
9 cated within the borders of the United States,
10 regardless of whether the community is lo-
11 cated—

12 “(i) on original or acquired territory
13 of the community; or

14 “(ii) within or outside the boundaries
15 of any particular State.

16 “(4) INDIAN TRIBE.—The term ‘Indian tribe’
17 has the meaning given that term in section 4 of the
18 Indian Self-Determination and Education Assistance
19 Act (25 U.S.C. 450b), except the term, for the pur-
20 poses of this title, shall not include any Native Cor-
21 poration.

22 “(5) NATIVE CORPORATION.—The term ‘Native
23 Corporation’ has the meaning given the term in sec-
24 tion 3 of the Alaska Native Claims Settlement Act
25 (43 U.S.C. 1602).

1 “(6) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of the Interior.

3 “(7) TRIBAL CONSORTIUM.—The term ‘tribal
4 consortium’ means an organization that consists of
5 at least 3 entities, at least 1 of which is an Indian
6 tribe.

7 **“SEC. 2602. INDIAN TRIBAL RESOURCE REGULATION.**

8 “To the maximum extent practicable, the Secretary
9 and the Secretary of Energy shall make available to In-
10 dian tribes, tribal consortia, and Native Corporations sci-
11 entific and technical data for use in the development and
12 management of energy resources on Indian land and on
13 land conveyed to a Native Corporation.

14 **“SEC. 2603. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-**
15 **OF-WAY INVOLVING ENERGY DEVELOPMENT**
16 **OR TRANSMISSION.**

17 “(a) IN GENERAL.—Notwithstanding any other pro-
18 vision of law—

19 “(1) an Indian or Indian tribe may enter into
20 a lease or business agreement for the purpose of en-
21 ergy development, including a lease or business
22 agreement for—

23 “(A) exploration for, extraction of, proc-
24 essing of, or other development of energy re-
25 sources; and

1 “(B) construction or operation of—

2 “(i) an electric generation, trans-
3 mission, or distribution facility located on
4 Indian land; or

5 “(ii) a facility to process or refine en-
6 ergy resources developed on Indian land;
7 and

8 “(2) a lease or business agreement described in
9 paragraph (1) shall not require the approval of the
10 Secretary if—

11 “(A) the lease or business agreement is ex-
12 ecuted under tribal regulations approved by the
13 Secretary under subsection (e); and

14 “(B) the term of the lease or business
15 agreement does not exceed 30 years.

16 “(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC
17 TRANSMISSION OR DISTRIBUTION LINES.—An Indian
18 tribe may grant a right-of-way over the Indian land of the
19 Indian tribe for a pipeline or an electric transmission or
20 distribution line without specific approval by the Secretary
21 if—

22 “(1) the right-of-way is executed under and
23 complies with tribal regulations approved by the Sec-
24 retary under subsection (e);

1 “(2) the term of the right-of-way does not ex-
2 ceed 30 years; and

3 “(3) the pipeline or electric transmission or dis-
4 tribution line serves—

5 “(A) an electric generation, transmission,
6 or distribution facility located on Indian land;
7 or

8 “(B) a facility located on Indian land that
9 processes or refines renewable or nonrenewable
10 energy resources developed on Indian land.

11 “(c) RENEWALS.—A lease or business agreement en-
12 tered into or a right-of-way granted by an Indian tribe
13 under this section may be renewed at the discretion of the
14 Indian tribe, in accordance with this section.

15 “(d) VALIDITY.—No lease, business agreement, or
16 right-of-way under this section shall be valid unless the
17 lease, business agreement, or right-of-way is authorized in
18 accordance with tribal regulations approved by the Sec-
19 retary under subsection (e).

20 “(e) TRIBAL REGULATORY REQUIREMENTS.—

21 “(1) IN GENERAL.—An Indian tribe may sub-
22 mit to the Secretary for approval tribal regulations
23 governing leases, business agreements, and rights-of-
24 way under this section.

25 “(2) APPROVAL OR DISAPPROVAL.—

1 “(A) IN GENERAL.—Not later than 120
2 days after the date on which the Secretary re-
3 ceives tribal regulations submitted by an Indian
4 tribe under paragraph (1) (or such later date as
5 may be agreed to by the Secretary and the In-
6 dian tribe), the Secretary shall approve or dis-
7 approve the regulations.

8 “(B) CONDITIONS FOR APPROVAL.—The
9 Secretary shall approve tribal regulations sub-
10 mitted under paragraph (1) only if the regula-
11 tions include provisions that, with respect to a
12 lease, business agreement, or right-of-way
13 under this section—

14 “(i) ensure the acquisition of nec-
15 essary information from the applicant for
16 the lease, business agreement, or right-of-
17 way;

18 “(ii) address the term of the lease or
19 business agreement or the term of convey-
20 ance of the right-of-way;

21 “(iii) address amendments and renew-
22 als;

23 “(iv) address consideration for the
24 lease, business agreement, or right-of-way;

1 “(v) address technical or other rel-
2 evant requirements;

3 “(vi) establish requirements for envi-
4 ronmental review in accordance with sub-
5 paragraph (C);

6 “(vii) ensure compliance with all ap-
7 plicable environmental laws;

8 “(viii) identify final approval author-
9 ity;

10 “(ix) provide for public notification of
11 final approvals; and

12 “(x) establish a process for consulta-
13 tion with any affected States concerning
14 potential off-reservation impacts associated
15 with the lease, business agreement, or
16 right-of-way.

17 “(C) ENVIRONMENTAL REVIEW PROC-
18 ESS.—Tribal regulations submitted under para-
19 graph (1) shall establish, and include provisions
20 to ensure compliance with, an environmental re-
21 view process that, with respect to a lease, busi-
22 ness agreement, or right-of-way under this sec-
23 tion, provides for—

1 “(i) the identification and evaluation
2 of all significant environmental impacts (as
3 compared with a no-action alternative);

4 “(ii) the identification of proposed
5 mitigation;

6 “(iii) a process for ensuring that the
7 public is informed of and has an oppor-
8 tunity to comment on any proposed lease,
9 business agreement, or right-of-way before
10 tribal approval of the lease, business agree-
11 ment, or right-of-way (or any amendment
12 to or renewal of a lease, business agree-
13 ment, or right-of-way); and

14 “(iv) sufficient administrative support
15 and technical capability to carry out the
16 environmental review process.

17 “(3) PUBLIC PARTICIPATION.—The Secretary
18 may provide notice and opportunity for public com-
19 ment on tribal regulations submitted under para-
20 graph (1).

21 “(4) DISAPPROVAL.—If the Secretary dis-
22 approves tribal regulations submitted by an Indian
23 tribe under paragraph (1), the Secretary shall—

24 “(A) notify the Indian tribe in writing of
25 the basis for the disapproval;

1 “(B) identify what changes or other ac-
2 tions are required to address the concerns of
3 the Secretary; and

4 “(C) provide the Indian tribe with an op-
5 portunity to revise and resubmit the regula-
6 tions.

7 “(5) EXECUTION OF LEASE OR BUSINESS
8 AGREEMENT OR GRANTING OF RIGHT-OF-WAY.—If
9 an Indian tribe executes a lease or business agree-
10 ment or grants a right-of-way in accordance with
11 tribal regulations approved under this subsection,
12 the Indian tribe shall provide to the Secretary—

13 “(A) a copy of the lease, business agree-
14 ment, or right-of-way document (including all
15 amendments to and renewals of the document);
16 and

17 “(B) in the case of tribal regulations or a
18 lease, business agreement, or right-of-way that
19 permits payment to be made directly to the In-
20 dian tribe, documentation of those payments
21 sufficient to enable the Secretary to discharge
22 the trust responsibility of the United States as
23 appropriate under applicable law.

24 “(6) LIABILITY.—The United States shall not
25 be liable for any loss or injury sustained by any

1 party (including an Indian tribe or any member of
2 an Indian tribe) to a lease, business agreement, or
3 right-of-way executed in accordance with tribal regu-
4 lations approved under this subsection.

5 “(7) COMPLIANCE REVIEW.—

6 “(A) IN GENERAL.—After exhaustion of
7 tribal remedies, any person may submit to the
8 Secretary, in a timely manner, a petition to re-
9 view compliance of an Indian tribe with tribal
10 regulations of the Indian tribe approved under
11 this subsection.

12 “(B) ACTION BY SECRETARY.—The Sec-
13 retary shall—

14 “(i) not later than 60 days after the
15 date on which the Secretary receives a pe-
16 tition under subparagraph (A), review
17 compliance of an Indian tribe described in
18 subparagraph (A); and

19 “(ii) on completion of the review, if
20 the Secretary determines that an Indian
21 tribe is not in compliance with tribal regu-
22 lations approved under this subsection,
23 take such action as is necessary to compel
24 compliance, including—

1 “(I)(aa) rescinding a lease, busi-
2 ness agreement, or right-of-way under
3 this section; or

4 “(bb) suspending a lease, busi-
5 ness agreement, or right-of-way under
6 this section until an Indian tribe is in
7 compliance with tribal regulations;
8 and

9 “(II) rescinding approval of the
10 tribal regulations and reassuming the
11 responsibility for approval of leases,
12 business agreements, or rights-of-way
13 associated with an energy pipeline or
14 distribution line described in sub-
15 section (b).

16 “(C) COMPLIANCE.—If the Secretary seeks
17 to compel compliance of an Indian tribe with
18 tribal regulations under subparagraph (B)(ii),
19 the Secretary shall—

20 “(i) make a written determination
21 that describes the manner in which the
22 tribal regulations have been violated;

23 “(ii) provide the Indian tribe with a
24 written notice of the violation together
25 with the written determination; and

1 “(iii) before taking any action de-
2 scribed in subparagraph (B)(ii) or seeking
3 any other remedy, provide the Indian tribe
4 with a hearing and a reasonable oppor-
5 tunity to attain compliance with the tribal
6 regulations.

7 “(D) APPEAL.—An Indian tribe described
8 in subparagraph (C) shall retain all rights to
9 appeal as provided in regulations promulgated
10 by the Secretary.

11 “(f) AGREEMENTS.—

12 “(1) IN GENERAL.—Any agreement by an In-
13 dian tribe that relates to the development of an elec-
14 tric generation, transmission, or distribution facility,
15 or a facility to process or refine renewable or non-
16 renewable energy resources developed on Indian
17 land, shall not require the specific approval of the
18 Secretary under section 2103 of the Revised Stat-
19 utes (25 U.S.C. 81) if the activity that is the subject
20 of the agreement is carried out in accordance with
21 this section.

22 “(2) LIABILITY.—The United States shall not
23 be liable for any loss or injury sustained by any per-
24 son (including an Indian tribe or any member of an
25 Indian tribe) resulting from an action taken in per-

1 formance of an agreement entered into under this
2 subsection.

3 “(g) NO EFFECT ON OTHER LAW.—Nothing in this
4 section affects the application of any provision of—

5 “(1) the Act of May 11, 1938 (commonly
6 known as the Indian Mineral Leasing Act of 1938;
7 25 U.S.C. 396a et seq.);

8 “(2) the Indian Mineral Development Act of
9 1982 (25 U.S.C. 2101 et seq.);

10 “(3) the Surface Mining Control and Reclama-
11 tion Act of 1977 (30 U.S.C. 1201 et seq.); or

12 “(4) any Federal environmental law.

13 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated such sums as are nec-
15 essary to carry out this section, to remain available until
16 expended.”.

17 **TITLE II—OIL AND GAS**

18 **SEC. 30201. PROGRAM ON OIL AND GAS ROYALTIES IN-** 19 **KIND.**

20 (a) APPLICABILITY OF SECTION.—Notwithstanding
21 any other provision of law, the provisions of this section
22 shall apply to all royalty in-kind accepted by the Secretary
23 of the Interior on or after the date of the enactment of
24 this Act under any Federal oil or gas lease or permit under
25 section 36 of the Mineral Leasing Act (30 U.S.C. 192),

1 section 27 of the Outer Continental Shelf Lands Act (43
2 U.S.C. 1353), or any other Federal law governing leasing
3 of Federal lands for oil and gas development.

4 (b) TERMS AND CONDITIONS.—All royalty accruing
5 to the United States shall, on the demand of the Secretary
6 of the Interior, be paid in oil or gas. If the Secretary of
7 the Interior makes such a demand, the following provi-
8 sions apply to such payment:

9 (1) Delivery by, or on behalf of, the lessee of
10 the royalty amount and quality due under the lease
11 satisfies the lessee's royalty obligation for the
12 amount delivered, except that transportation and
13 processing reimbursements paid to, or deductions
14 claimed by, the lessee shall be subject to review and
15 audit.

16 (2)(A) Royalty production shall be placed in
17 marketable condition by the lessee at no cost to the
18 United States.

19 (B) In this paragraph, the term “in marketable
20 condition” means sufficiently free from impurities
21 and otherwise in a condition that it will be accepted
22 by a purchaser under a sales contract typical of the
23 field or area in which the royalty production was
24 produced.

25 (3) The Secretary of the Interior may—

1 (A) sell or otherwise dispose of any royalty
2 production taken in-kind (other than oil or gas
3 transferred under section 27(a)(3) of the Outer
4 Continental Shelf Lands Act (43 U.S.C.
5 1353(a)(3)) for not less than the market price;
6 and

7 (B) transport or process (or both) any roy-
8 alty production taken in-kind.

9 (4) The Secretary of the Interior may, notwith-
10 standing section 3302 of title 31, United States
11 Code, retain and use a portion of the revenues from
12 the sale of oil and gas royalties taken in-kind that
13 otherwise would be deposited to miscellaneous re-
14 ceipts, without regard to fiscal year limitation, or
15 may use royalty production, to pay the cost of—

16 (A) transporting the royalty production;

17 (B) processing the royalty production;

18 (C) disposing of the royalty production; or

19 (D) any combination of transporting, proc-
20 essing, and disposing of the royalty production.

21 (5) The Secretary of the Interior may use a
22 portion of the revenues from the sale of oil royalties
23 taken in-kind, without fiscal year limitation, to pay
24 transportation costs, salaries, and other administra-

1 tive costs directly related to filling the Strategic Pe-
2 troleum Reserve.

3 (c) REIMBURSEMENT OF COST.—If the lessee, pursu-
4 ant to an agreement with the United States or as provided
5 in the lease, processes the royalty gas or delivers the roy-
6 alty oil or gas at a point not on or adjacent to the lease
7 area, the Secretary of the Interior shall—

8 (1) reimburse the lessee for the reasonable costs
9 of transportation (not including gathering) from the
10 lease to the point of delivery or for processing costs;
11 or

12 (2) at the discretion of the Secretary of the In-
13 terior, allow the lessee to deduct such transportation
14 or processing costs in reporting and paying royalties
15 in value for other Federal oil and gas leases.

16 (d) BENEFIT TO THE UNITED STATES REQUIRED.—
17 The Secretary of the Interior may receive oil or gas royal-
18 ties in-kind only if the Secretary determines that receiving
19 such royalties provides benefits to the United States great-
20 er than or equal to those likely to have been received had
21 royalties been taken in value.

22 (e) REPORT TO CONGRESS.—By June 30, 2004, the
23 Secretary of the Interior shall provide a report to the Con-
24 gress that describes actions taken to develop an organiza-
25 tion, business processes, and automated systems to sup-

1 port a full royalty in-kind capability to be used in tandem
2 with the royalty in value approach to managing Federal
3 oil and gas revenues.

4 (f) DEDUCTION OF EXPENSES.—

5 (1) IN GENERAL.—Before making payments
6 under section 35 of the Mineral Leasing Act (30
7 U.S.C. 191) or section 8(g) of the Outer Continental
8 Shelf Lands Act (43 U.S.C. 1337(g)) of revenues
9 derived from the sale of royalty production taken in-
10 kind from a lease, the Secretary of the Interior shall
11 deduct amounts paid or deducted under subsections
12 (b)(4) and (c), and shall deposit such amounts to
13 miscellaneous receipts.

14 (2) ACCOUNTING FOR DEDUCTIONS.—If the
15 Secretary of the Interior allows the lessee to deduct
16 transportation or processing costs under subsection
17 (c), the Secretary may not reduce any payments to
18 recipients of revenues derived from any other Fed-
19 eral oil and gas lease as a consequence of that de-
20 duction.

21 (g) CONSULTATION WITH STATES.—The Secretary
22 of the Interior—

23 (1) shall consult with a State before conducting
24 a royalty in-kind program under this title within the
25 State, and may delegate management of any portion

1 of the Federal royalty in-kind program to such State
2 except as otherwise prohibited by Federal law; and

3 (2) shall consult annually with any State from
4 which Federal oil or gas royalty is being taken in-
5 kind to ensure to the maximum extent practicable
6 that the royalty in-kind program provides revenues
7 to the State greater than or equal to those likely to
8 have been received had royalties been taken in-value.

9 (h) PROVISIONS FOR SMALL REFINERIES.—

10 (1) PREFERENCE.—If the Secretary of the In-
11 terior determines that sufficient supplies of crude oil
12 are not available in the open market to refineries not
13 having their own source of supply for crude oil, the
14 Secretary may grant preference to such refineries in
15 the sale of any royalty oil accruing or reserved to the
16 United States under Federal oil and gas leases
17 issued under any mineral leasing law, for processing
18 or use in such refineries at private sale at not less
19 than the market price.

20 (2) PRORATION AMONG REFINERIES IN PRO-
21 Duction AREA.—In disposing of oil under this sub-
22 section, the Secretary of the Interior may, at the
23 discretion of the Secretary, prorate such oil among
24 such refineries in the area in which the oil is pro-
25 duced.

1 (i) DISPOSITION TO FEDERAL AGENCIES.—

2 (1) ONSHORE ROYALTY.—Any royalty oil or gas
3 taken by the Secretary of the Interior in-kind from
4 onshore oil and gas leases may be sold at not less
5 than the market price to any department or agency
6 of the United States.

7 (2) OFFSHORE ROYALTY.—Any royalty oil or
8 gas taken in-kind from Federal oil and gas leases on
9 the outer Continental Shelf may be disposed of only
10 under section 27 of the Outer Continental Shelf
11 Lands Act (43 U.S.C. 1353).

12 (j) PREFERENCE FOR FEDERAL LOW-INCOME EN-
13 ERGY ASSISTANCE PROGRAMS.—In disposing of royalty oil
14 or gas taken in-kind under this section, the Secretary may
15 grant a preference to any person, including any State or
16 Federal agency, for the purpose of providing additional re-
17 sources to any Federal low-income energy assistance pro-
18 gram.

19 **SEC. 30202. CLARIFICATION OF FAIR MARKET RENTAL**
20 **VALUE DETERMINATIONS FOR PUBLIC**
21 **LANDS AND FOREST SERVICE RIGHTS-OF-**
22 **WAY.**

23 (a) LINEAR RIGHTS-OF-WAY UNDER FEDERAL
24 LAND POLICY AND MANAGEMENT ACT.—Section 504 of
25 the Federal Land Policy and Management Act of 1976

1 (43 U.S.C. 1764) is amended by adding at the end the
2 following:

3 “(k) DETERMINATION OF FAIR MARKET VALUE OF
4 LINEAR RIGHTS-OF-WAY.—(1) Effective upon the
5 issuance of the rules required by paragraph (2), for pur-
6 poses of subsection (g), the Secretary concerned shall de-
7 termine the fair market rental for the use of land encum-
8 bered by a linear right-of-way granted, issued, or renewed
9 under this title using the valuation method described in
10 paragraphs (2), (3), and (4).

11 “(2) Not later than 1 year after the date of enact-
12 ment of this subsection, and in accordance with subsection
13 (k), the Secretary of the Interior shall amend section
14 2803.1–2 of title 43, Code of Federal Regulations, as in
15 effect on the date of enactment of this subsection, to revise
16 the per acre rental fee zone value schedule by State, coun-
17 ty, and type of linear right-of-way use to reflect current
18 values of land in each zone. The Secretary of Agriculture
19 shall make the same revisions for linear rights-of-way
20 granted, issued, or renewed under this title on National
21 Forest System lands.

22 “(3) The Secretary concerned shall update annually
23 the schedule revised under paragraph (2) by multiplying
24 the current year’s rental per acre by the annual change,
25 second quarter to the second quarter (June 30 to June

1 30) in the Gross National Product Implicit Price Deflator
2 Index published in the Survey of Current Business of the
3 Department of Commerce, Bureau of Economic Analysis.

4 “(4) Whenever the cumulative change in the index
5 referred to in paragraph (3) exceeds 30 percent, or the
6 change in the 3-year average of the 1-year Treasury inter-
7 est rate used to determine per acre rental fee zone values
8 exceeds plus or minus 50 percent, the Secretary concerned
9 shall conduct a review of the zones and rental per acre
10 figures to determine whether the value of Federal land has
11 differed sufficiently from the index referred to in para-
12 graph (3) to warrant a revision in the base zones and rent-
13 al per acre figures. If, as a result of the review, the Sec-
14 retary concerned determines that such a revision is war-
15 ranted, the Secretary concerned shall revise the base zones
16 and rental per acre figures accordingly.”.

17 (b) RIGHTS-OF-WAY UNDER MINERAL LEASING
18 ACT.—Section 28(l) of the Mineral Leasing Act (30
19 U.S.C. 185(l)) is amended by inserting before the period
20 at the end the following: “using the valuation method de-
21 scribed in section 2803.1–2 of title 43, Code of Federal
22 Regulations, as revised pursuant to section 504(k) of the
23 Federal Land Policy and Management Act of 1976 (43
24 U.S.C. 1764(k))”.

1 **SEC. 30203. USGS ESTIMATES OF OIL AND GAS RESOURCES**
2 **UNDERLYING ONSHORE FEDERAL LANDS.**

3 Section 604(a) of the Energy Act of 2000 (42 U.S.C.
4 6217) is amended—

5 (1) in subsection (a)(1)—

6 (A) by striking “reserve”; and

7 (B) by striking “and” after the semicolon;

8 (2) by striking subsection (a)(2) and inserting
9 the following:

10 “(2) the extent and nature of any restrictions
11 or impediments to the development of such re-
12 sources, including—

13 “(A) impediments to the timely granting of
14 leases; and

15 “(B) post-lease restrictions, impediments,
16 or delays on development, involving conditions
17 of approval, applications for permits to drill, or
18 processing of environmental permits; and

19 “(C) permits or restrictions associated with
20 transporting the resources for entry into com-
21 merce; and

22 “(3) the amount of resources not produced or
23 introduced into commerce because of those restric-
24 tions.”; and

25 (3) in subsection (b)—

1 (A) by striking “reserve” and inserting
2 “resource”; and

3 (B) by striking “publically” and inserting
4 “publicly”.

5 **SEC. 30204. ROYALTY INCENTIVES FOR CERTAIN OFF-**
6 **SHORE AREAS.**

7 (a) OUTER CONTINENTAL SHELF SHALLOW WATER
8 DEEP GAS ROYALTY RELIEF.—

9 (1) SHORT TITLE.—This subsection may be
10 cited as the “Outer Continental Shelf Shallow Water
11 Deep Gas Royalty Relief Act”.

12 (2) PURPOSES.—The purposes of this sub-
13 section are the following:

14 (A) To accelerate natural gas exploration,
15 development, and production from wells drilled
16 to deep depths on existing shallow water lease
17 tracts on the Outer Continental Shelf.

18 (B) To provide royalty incentives for the
19 production of natural gas from such tracts.

20 (C) To provide royalty incentives for devel-
21 opment of new technologies and the exploration
22 and development of the new frontier of deep
23 drilling on the Outer Continental Shelf.

1 (3) ROYALTY INCENTIVES UNDER EXISTING
2 LEASES FOR PRODUCTION OF DEEP GAS IN SHAL-
3 LOW WATER IN THE GULF OF MEXICO.—

4 (A) SUSPENSION OF ROYALTIES.—

5 (i) IN GENERAL.—The Secretary of
6 the Interior shall grant royalty relief for
7 natural gas produced under leases issued
8 under the Outer Continental Shelf Lands
9 Act (43 U.S.C. 1301 et seq.) prior to Jan-
10 uary 1, 2001, from deep wells on oil and
11 gas lease tracts in shallow waters of the
12 Gulf of Mexico located wholly west of 87
13 degrees, 30 minutes west longitude.

14 (ii) AMOUNT OF RELIEF.—The Sec-
15 retary shall grant royalty relief to eligible
16 leases in the following amounts:

17 (I) A suspension volume of at
18 least 15 billion cubic feet of natural
19 gas produced from a successful deep
20 well with a total vertical depth of
21 15,000 feet to 17,999 feet.

22 (II) A suspension volume of at
23 least 25 billion cubic feet of natural
24 gas produced from a successful deep

1 well with a total vertical depth of
2 18,000 feet to 19,999 feet.

3 (III) A suspension volume of at
4 least 35 billion cubic feet of natural
5 gas produced from any ultra deep
6 well.

7 (IV) A suspension volume of at
8 least 5 billion cubic feet of natural gas
9 per well for up to 2 unsuccessful wells
10 drilled to a depth of at least 18,000
11 feet on a lease tract that subsequently
12 produces natural gas from a success-
13 ful deep well.

14 (iii) LIMITATION.—The Secretary
15 shall not grant the royalty incentives out-
16 lined in this subparagraph if the average
17 annual NYMEX natural gas price exceeds
18 for one full calendar year the threshold
19 price of \$5 per million Btu, adjusted from
20 the year 2000 for inflation.

21 (B) DEFINITIONS.—For purposes of this
22 paragraph:

23 (i) The term “deep well” means a well
24 drilled with a perforated interval, the top
25 of which is at least 15,000 feet true

1 vertical depth below the datum at mean
2 sea level.

3 (ii) The term “eligible lease” means a
4 lease that—

5 (I) was issued in a lease sale held
6 before January 1, 2001;

7 (II) is for a tract located in the
8 Gulf of Mexico entirely in water
9 depths less than 200 meters on a
10 block wholly west of 87 degrees, 30
11 minutes west longitude; and

12 (III) is for a tract that has not
13 produced gas or oil from a well that
14 commenced drilling before March 26,
15 2003, with a completion 15,000 feet
16 true vertical depth below the datum at
17 mean sea level or deeper.

18 (iii) The term “shallow water” means
19 water less than 200 meters deep.

20 (iv) The term “ultra deep well” means
21 a well drilled with a perforated interval,
22 the top of which is at least 20,000 feet
23 true vertical depth below the datum at
24 mean sea level.

1 (4) SUNSET.—This subsection shall have no
2 force or effect after the end of the 5-year period be-
3 ginning on the date of the enactment of this Act.

4 (b) DEEP WATER AREAS.—Section 8(a) of the Outer
5 Continental Shelf Lands Act (43 U.S.C. 1337(a)) is
6 amended by adding at the end the following:

7 “(9)(A) For all tracts located in water depths of
8 greater than 400 meters in the Western and Central Plan-
9 ning Area of the Gulf of Mexico, including that portion
10 of the Eastern Planning Area of the Gulf of Mexico en-
11 compassing whole lease blocks lying west of 87 degrees,
12 30 minutes West longitude, and for all tracts in a frontier
13 area offshore Alaska, any oil or gas lease sale under this
14 Act occurring after the date of the enactment of this para-
15 graph and before July 1, 2007, shall use the bidding sys-
16 tem authorized in paragraph (1)(H), except that the sus-
17 pension of royalties shall be set at a volume of not less
18 than the following:

19 “(i) 5 million barrels of oil equivalent for each
20 lease in water depths of 400 to 800 meters.

21 “(ii) 9 million barrels of oil equivalent for each
22 lease in water depths of 800 to 1,600 meters.

23 “(iii) 12 million barrels of oil equivalent for
24 each lease in water depths greater than 1,600 me-
25 ters.

1 “(B) For purposes of this paragraph, the term ‘fron-
2 tier area offshore Alaska’ includes, at a minimum, those
3 areas offshore Alaska with seasonal ice, long distances to
4 existing pipelines and ports, or a lack of production infra-
5 structure.”.

6 (c) APPLICATION OF OTHER EXISTING AUTHORITY
7 TO OFFSHORE ALASKA.—Section 8(a)(3)(B) of the Outer
8 Continental Shelf Lands Act (43 U.S.C. 1337(a)(3)(B))
9 is amended—

10 (1) by striking “and the portion” and inserting
11 “, the portion”; and

12 (2) by inserting after “longitude,” the fol-
13 lowing: “and in the planning areas offshore Alas-
14 ka,”.

15 (d) RELATIONSHIP TO EXISTING AUTHORITY.—Ex-
16 cept as expressly provided in this section, nothing in this
17 section is intended to limit the authority of the Secretary
18 of the Interior under the Outer Continental Shelf Lands
19 Act (43 U.S.C. 1331 et seq.) to provide royalty suspen-
20 sion.

21 (e) SAVINGS CLAUSE.—Nothing in this section shall
22 be construed to affect any offshore preleasing, leasing, or
23 development moratorium, including any moratorium appli-
24 cable to the Eastern Planning Area of the Gulf of Mexico
25 located off the Gulf Coast of Florida.

1 **SEC. 30205. MARGINAL PROPERTY PRODUCTION INCEN-**
2 **TIVES.**

3 (a) PURPOSE.—The purpose of this section is to pro-
4 vide to independent producers incentives for extended pro-
5 duction from Federal oil and gas leases that are still pro-
6 ducible but approaching abandonment due to economic
7 factors.

8 (b) MARGINAL PROPERTY DEFINED.—

9 (1) IN GENERAL.—Until such time as the Sec-
10 retary of the Interior promulgates rules under sub-
11 section (f) that prescribe a different definition, for
12 purposes of the royalty relief granted under this sec-
13 tion the term “marginal property” means an on-
14 shore unit, communitization agreement, or lease not
15 within a unit or communitization agreement, that
16 produces on average the combined equivalent of less
17 than 15 barrels of oil per well per day or 90 million
18 British thermal units of gas per well per day.

19 (2) CALCULATION OF AVERAGE PER WELL PRO-
20 Duction.—In calculating the average per well pro-
21 duction under paragraph (1), the lessee and the Sec-
22 retary shall—

23 (A) include those wells that produce more
24 than half the days in the three most recent pro-
25 duction months; and

1 (B) calculate the average over the three
2 most recent production months.

3 (c) CONDITIONS FOR REDUCTION OF ROYALTY
4 RATE.—Until such time as the Secretary of the Interior
5 promulgates rules under subsection (f) that prescribe dif-
6 ferent thresholds or standards—

7 (1) the Secretary shall, upon request by the op-
8 erator of a marginal property who is an independent
9 producer, reduce the royalty rate on oil production
10 from the marginal property as prescribed in sub-
11 section (d) when the spot price of West Texas Inter-
12 mediate crude oil at Cushing, Oklahoma, is, on aver-
13 age, less than \$15 per barrel for 90 consecutive
14 trading days; and

15 (2) the Secretary shall, upon request by the op-
16 erator of a marginal property who is an independent
17 producer, reduce the royalty rate on gas production
18 from the marginal property to the rate prescribed in
19 subsection (d) when the spot price of natural gas de-
20 livered at Henry Hub, Louisiana, is, on average, less
21 than \$2 per million British thermal units for 90 con-
22 secutive trading days.

23 (d) REDUCED ROYALTY RATE.—

24 (1) IN GENERAL.—The reduced royalty rate
25 under this subsection shall be the lesser of—

1 (A) 5 percent; or

2 (B) the applicable rate under any other
3 statutory or regulatory royalty relief provision
4 that applies to the affected production.

5 (2) EFFECTIVE DATE.—The reduced royalty
6 rate under this subsection shall be effective on the
7 first day of the production month following the date
8 on which the applicable price standard prescribed in
9 subsection (c) is met.

10 (e) TERMINATION OF REDUCED ROYALTY RATE.—
11 A royalty rate prescribed in subsection (d)(1) shall termi-
12 nate—

13 (1) for oil production from a marginal property,
14 on the first day of the production month following
15 the date on which—

16 (A) the spot price of West Texas Inter-
17 mediate crude oil at Cushing, Oklahoma, on av-
18 erage, exceeds \$15 per barrel for 90 consecutive
19 trading days, or

20 (B) the property no longer qualifies as a
21 marginal property under subsection (b); and

22 (2) for gas production from a marginal prop-
23 erty, on the first day of the production month fol-
24 lowing the date on which—

1 (A) the spot price of natural gas delivered
2 at Henry Hub, Louisiana, on average, exceeds
3 \$2 per million British thermal units for 90 con-
4 secutive trading days, or

5 (B) the property no longer qualifies as a
6 marginal property under subsection (b).

7 (f) RULES PRESCRIBING DIFFERENT RELIEF.—

8 (1) IN GENERAL.—The Secretary of the Inte-
9 rior, after consultation with the Secretary of Energy,
10 may by rule prescribe different parameters, stand-
11 ards, and requirements for, and a different degree or
12 extent of, royalty relief for marginal properties in
13 lieu of those prescribed in subsections (b) through
14 (d).

15 (2) MARGINAL PROPERTIES.—The Secretary of
16 the Interior, after consultation with the Secretary of
17 Energy, and within 1 year after the date of enact-
18 ment of this Act, shall—

19 (A) by rule prescribe standards and re-
20 quirements for, and the extent of royalty relief
21 for, marginal properties for oil and gas leases
22 on the outer Continental Shelf; and

23 (B) by rule define what constitutes a mar-
24 ginal property on the outer Continental Shelf
25 for purposes of this section.

1 (3) CONSIDERATIONS.—In promulgating rules
2 under this subsection, the Secretary of the Interior
3 may consider—

4 (A) oil and gas prices and market trends;

5 (B) production costs;

6 (C) abandonment costs;

7 (D) Federal and State tax provisions and
8 their effects on production economics;

9 (E) other royalty relief programs;

10 (F) regional differences in average well-
11 head prices;

12 (G) national energy security issues; and

13 (H) other relevant matters.

14 (g) SAVINGS PROVISION.—Nothing in this section
15 shall prevent a lessee from receiving royalty relief or a roy-
16 alty reduction pursuant to any other law or regulation that
17 provides more relief than the amounts provided by this
18 section.

19 (h) INDEPENDENT PRODUCER DEFINED.—In this
20 section the term “independent producer” means a person
21 who is not an integrated oil company, as that term is de-
22 fined in section 219(b)(4) of the Internal Revenue Code
23 of 1986 (26 U.S.C. 291(b)(4)).

1 **SEC. 30206. FEDERAL ONSHORE OIL AND GAS LEASING AND**
2 **PERMITTING PRACTICES.**

3 (a) REVIEW OF ONSHORE OIL AND GAS LEASING
4 PRACTICES.—The Secretary of the Interior, in cooperation
5 with the Secretary of Agriculture with respect to National
6 Forest System lands under the jurisdiction of the Depart-
7 ment of Agriculture, shall perform an internal review of
8 Federal onshore oil and gas leasing and permitting prac-
9 tices. The review shall include the following:

10 (1) The process by which Federal land man-
11 agers accept or reject an offer to lease, including the
12 timeframes in which such offers are acted upon, and
13 any recommendations for improving and expediting
14 the process.

15 (2) The process for considering applications for
16 permits to drill, including the timeframes in which
17 such applications are considered, and any rec-
18 ommendations for improving and expediting the
19 process.

20 (3) The process for considering surface use
21 plans of operation, including the timeframes in
22 which such plans are considered, and any rec-
23 ommendations for improving and expediting the
24 process.

25 (4) The process for administrative appeal of de-
26 cisions or orders of officers or employees of the Bu-

1 reau of Land Management with respect to a Federal
2 oil or gas lease, including the timeframes in which
3 such appeals are heard and decided, and any rec-
4 ommendations for improving and expediting the
5 process.

6 (5) The process by which Federal land man-
7 agers identify stipulations to address site-specific
8 concerns and conditions, including those relating to
9 the environment and resource use conflicts, whether
10 stipulations are effective in addressing resource val-
11 ues, and any recommendations for expediting and
12 improving the identification and effectiveness of stip-
13 ulations.

14 (6) The process by which the Federal land
15 management agencies coordinate planning and anal-
16 ysis with planning of Federal, State, and local agen-
17 cies having jurisdiction over adjacent areas and
18 other land uses, and any recommendations for im-
19 proving and expediting the process.

20 (7) The documentation provided to lease appli-
21 cants and lessees with respect to determinations to
22 reject lease applications or to require modification of
23 proposed surface use plans of operation and rec-
24 ommendations regarding improvement of such docu-

1 mentation to more clearly set forth the basis for the
2 decision.

3 (b) REPORT.—The Secretaries shall report to the
4 Committee on Resources of the House of Representatives
5 and to the Committee on Energy and Natural Resources
6 of the Senate no later than 1 year after the date of the
7 enactment of this Act, summarizing the findings of their
8 respective reviews undertaken pursuant to this section and
9 the actions they have taken or plan to take to improve
10 the Federal onshore oil and gas leasing program.

11 **SEC. 30207. MANAGEMENT OF FEDERAL OIL AND GAS LEAS-**
12 **ING PROGRAMS.**

13 (a) TIMELY ACTION ON LEASES AND PERMITS.—To
14 ensure timely action on oil and gas leases and applications
15 for permits to drill on lands otherwise available for leasing,
16 the Secretary of the Interior shall—

17 (1) ensure expeditious compliance with the re-
18 quirements of section 102(2)(C) of the National En-
19 vironmental Policy Act of 1969 (42 U.S.C.
20 4332(2)(C));

21 (2) improve consultation and coordination with
22 the States and the public; and

23 (3) improve the collection, storage, and retrieval
24 of information related to such leasing activities.

25 (b) BEST MANAGEMENT PRACTICES.—

1 (1) IN GENERAL.—Within 18 months after the
2 date of enactment of this Act, the Secretary of the
3 Interior shall develop and implement best manage-
4 ment practices to improve the administration of the
5 onshore oil and gas leasing program pursuant to the
6 Mineral Leasing Act (30 U.S.C. 181, et seq.) and
7 ensure timely action on oil and gas leases and appli-
8 cations for permits to drill on lands otherwise avail-
9 able for leasing.

10 (2) CONSIDERATION AND CONSULTATION.—In
11 developing such best management practices the Sec-
12 retary shall consider the recommendations resulting
13 from the review under section 30206.

14 (3) REGULATIONS.—Within 180 days after the
15 development of best management practices under
16 paragraph (1), the Secretary shall publish for public
17 comment proposed regulations that set forth specific
18 timeframes for processing leases and applications in
19 accordance with those practices, including deadlines
20 for—

21 (A) approving or disapproving—

22 (i) resource management plans and
23 related documents;

24 (ii) lease applications;

- 1 (iii) applications for permits to drill;
2 and
3 (iv) surface use plans; and
4 (B) related administrative appeals.

5 **SEC. 30208. CONSULTATION REGARDING OIL AND GAS**
6 **LEASING ON PUBLIC LANDS.**

7 (a) IN GENERAL.—Not later than six months after
8 the date of enactment of this Act, the Secretary of the
9 Interior and the Secretary of Agriculture shall enter into,
10 and submit to the Congress, a memorandum of under-
11 standing in accordance with this section regarding oil and
12 gas leasing on public lands within the jurisdiction of the
13 Secretary of the Interior and National Forest System
14 lands within the jurisdiction of the Secretary of Agri-
15 culture.

16 (b) CONTENTS.—The memorandum of understanding
17 shall include provisions that—

- 18 (1) establish an administrative procedure for
19 timely processing of oil and gas lease applications,
20 including lines of authority, steps in application
21 processing, and timeframes for application proc-
22 essing;
- 23 (2) establish an administrative procedure for
24 timely processing of surface use plans of operation
25 and applications for permits to drill, including lines

1 of authority and steps for processing such plans and
2 applications within 30 days after receipt by the Sec-
3 retary concerned;

4 (3) provide for coordination of planning relating
5 to oil and gas development;

6 (4) provide for coordination of environmental
7 compliance efforts to avoid duplication of effort;

8 (5) provide for coordination of use of lease stip-
9 ulations to achieve consistency;

10 (6) ensure that lease stipulations are only as re-
11 strictive as is necessary to protect the resource for
12 which the stipulations are applied; and

13 (7) establish reasonable timeframes to process
14 applications for permits to drill.

15 (c) DATA RETRIEVAL SYSTEM.—

16 (1) IN GENERAL.—The Secretary of the Inte-
17 rior and the Secretary of Agriculture shall establish
18 a joint data retrieval system that is capable of track-
19 ing applications and formal requests made pursuant
20 to procedures of the Federal onshore oil and gas
21 leasing program and providing information as to the
22 status of such applications and requests within the
23 Department of the Interior and the Department of
24 Agriculture.

1 (2) AVAILABILITY OF DATA.—Data in the joint
2 data retrieval system shall be made available to the
3 public, consistent with applicable laws and regula-
4 tions regarding confidentiality and proprietary data.

5 (3) RESOURCE MAPPING.—The Secretary of the
6 Interior and the Secretary of Agriculture shall estab-
7 lish a joint GIS mapping system for use in tracking
8 surface resource values to aid in resource manage-
9 ment and processing of surface use plans of oper-
10 ation and applications for permits to drill.

11 **SEC. 30209. OIL AND GAS LEASE ACREAGE LIMITATIONS.**

12 Section 27(d)(1) of the Mineral Leasing Act (30
13 U.S.C. 184(d)(1)) is amended by inserting after “acreage
14 held in special tar sand areas” the following: “as well as
15 acreage under any lease any portion of which has been
16 committed to a federally approved unit or cooperative plan
17 or communitization agreement, or for which royalty, in-
18 cluding compensatory royalty or royalty in kind, was paid
19 in the preceding calendar year,”.

20 **SEC. 30210. FEDERAL REIMBURSEMENT FOR ORPHAN WELL**
21 **RECLAMATION.**

22 (a) DEFINITIONS.—In this section:

23 (1) LESSEE.—The term “lessee” means a per-
24 son who owns a lease, working interest, or operating

1 rights in an oil and gas lease on lands owned by the
2 United States.

3 (2) ORPHAN WELL.—The term “orphan well”
4 means any oil or gas well—

5 (A) that is located on lands owned by the
6 United States;

7 (B) that requires plugging and abandon-
8 ment under the regulations of the Department
9 of the Interior; and

10 (C) for which the Secretary is unable to
11 find any person who is legally responsible and
12 has the financial resources to reclaim the well.

13 (3) SECRETARY.—The term “Secretary” means
14 the Secretary of the Interior or the Secretary’s des-
15 ignee.

16 (b) REIMBURSEMENT FOR RECLAIMING WELLS ON
17 LANDS SUBJECT TO NEW LEASES.—If the Secretary
18 issues a new oil and gas lease on federally owned lands
19 on which 1 or more orphaned wells are located, the Sec-
20 retary—

21 (1) may require, as a condition of the lease,
22 that the lessee reclaim pursuant to the Secretary’s
23 standards all orphaned wells on the land leased; and

24 (2) shall provide to the lessee a credit against
25 royalties due under the lease for 100 percent of the

1 reasonable actual costs of reclaiming the orphaned
2 well pursuant to such requirement.

3 (c) ROYALTY CREDITS FOR RECLAIMING ORPHAN
4 WELLS ON OTHER LANDS.—The Secretary—

5 (1) may authorize any lessee under an oil and
6 gas lease on federally owned lands to reclaim pursu-
7 ant to the Secretary's standards—

8 (A) an orphan well on unleased federally
9 owned lands or unleased lands on the outer
10 Continental Shelf; or

11 (B) an orphan well located on an existing
12 lease on federally owned lands or the outer Con-
13 tinental Shelf for the reclamation of which the
14 lessee is not legally responsible; and

15 (2) shall provide to the lessee a credit against
16 royalties under the lessee's lease of 115 percent of
17 the reasonable actual costs of reclaiming the orphan
18 well.

19 (d) REPORTING AND APPLICATION OF ROYALTY
20 CREDITS.—

21 (1) IN GENERAL.—Any credit against royalties
22 required to be provided to a lessee under this section
23 may be reported against royalties on production
24 from any oil and gas lease on federally owned lands,

1 or on the outer Continental Shelf, administered by
2 the Secretary, that are owed by—

3 (A) a lessee;

4 (B) any wholly owned affiliate or wholly
5 commonly owned affiliate of a lessee; or

6 (C) any wholly owned affiliate or wholly
7 commonly owned affiliate of the person con-
8 ducting the reclamation work on an orphan
9 well.

10 (2) REPORTING BY DESIGNEES.—Credits
11 against royalties required to be provided to a lessee
12 under this section may be reported by a designee (as
13 defined in section 3 of the Federal Oil and Gas Roy-
14 alty Simplification and Fairness Act of 1982 (30
15 U.S.C. 1702)), when the designee reports and pays
16 royalty on behalf of the lessee.

17 (e) IMPLEMENTING REGULATIONS.—The Secretary
18 may promulgate such regulations as may be necessary and
19 appropriate to implement this section.

20 (f) PROTECTION AGAINST LIABILITY.—No person
21 who reclaims an orphan well under this section shall be
22 liable under any provision of Federal law for any costs
23 or damages as a result of action taken or omitted in the
24 course of carrying out a reclamation plan approved by the
25 Secretary under this section. This section shall not pre-

1 clude liability for costs or damages as a result of a gross
2 negligence or intentional misconduct by the person car-
3 rying out an approved reclamation plan. For purposes of
4 the preceding sentence, reckless, willful, or wanton mis-
5 conduct shall constitute gross negligence.

6 **SEC. 30211. PRESERVATION OF GEOLOGICAL AND GEO-**
7 **PHYSICAL DATA.**

8 (a) SHORT TITLE.—This section may be cited as the
9 “National Geological and Geophysical Data Preservation
10 Program Act of 2003”.

11 (b) PROGRAM.—The Secretary of the Interior shall
12 carry out a National Geological and Geophysical Data
13 Preservation Program in accordance with this section—

14 (1) to archive geologic, geophysical, and engi-
15 neering data, maps, well logs, and samples;

16 (2) to provide a national catalog of such archi-
17 val material; and

18 (3) to provide technical and financial assistance
19 related to the archival material.

20 (c) PLAN.—Within 1 year after the date of the enact-
21 ment of this Act, the Secretary shall develop and submit
22 to the Committee on Resources of the House of Represent-
23 atives and the Committee on Energy and Natural Re-
24 sources of the Senate a plan for the implementation of
25 the Program.

1 (d) DATA ARCHIVE SYSTEM.—

2 (1) ESTABLISHMENT.—The Secretary shall es-
3 tablish, as a component of the Program, a data ar-
4 chive system, which shall provide for the storage,
5 preservation, and archiving of subsurface, surface,
6 geological, geophysical and engineering data and
7 samples. The Secretary, in consultation with the Ad-
8 visory Committee, shall develop guidelines relating to
9 the data archive system, including the types of data
10 and samples to be preserved.

11 (2) SYSTEM COMPONENTS.—The system shall
12 be comprised of State agencies and agencies within
13 the Department of the Interior that maintain geo-
14 logical and geophysical data and samples that are
15 designated by the Secretary in accordance with this
16 subsection. The Program shall provide for the stor-
17 age of data and samples through data repositories
18 operated by such agencies.

19 (3) LIMITATION OF DESIGNATION.—The Sec-
20 retary may not designate a State agency as a com-
21 ponent of the data archive system unless it is the
22 agency that acts as the geological survey in the
23 State.

24 (4) DATA FROM FEDERAL LANDS.—The data
25 archive system shall provide for the archiving of rel-

1 evant subsurface data and samples obtained from
2 Federal lands—

3 (A) in the most appropriate repository des-
4 ignated under paragraph (2), with preference
5 being given to archiving data in the State in
6 which the data was collected; and

7 (B) consistent with all applicable law and
8 requirements relating to confidentiality and pro-
9 prietary data.

10 (e) NATIONAL CATALOG.—

11 (1) IN GENERAL.—As soon as practicable after
12 the date of the enactment of this section, the Sec-
13 retary shall develop and maintain, as a component
14 of the Program, a national catalog that identifies—

15 (A) data and samples available in the data
16 archive system established under subsection (d);

17 (B) the repository for particular material
18 in such system; and

19 (C) the means of accessing the material.

20 (2) AVAILABILITY.—The Secretary shall make
21 the national catalog accessible to the public on the
22 site of the Survey on the World Wide Web, con-
23 sistent with all applicable requirements related to
24 confidentiality and proprietary data.

25 (f) ADVISORY COMMITTEE.—

1 (1) IN GENERAL.—The Advisory Committee
2 shall advise the Secretary on planning and imple-
3 mentation of the Program.

4 (2) NEW DUTIES.—In addition to its duties
5 under the National Geologic Mapping Act of 1992
6 (43 U.S.C. 31b et seq.), the Advisory Committee
7 shall perform the following duties:

8 (A) Advise the Secretary on developing
9 guidelines and procedures for providing assist-
10 ance for facilities in subsection (g)(1).

11 (B) Review and critique the draft imple-
12 mentation plan prepared by the Secretary pur-
13 suant to subsection (c).

14 (C) Identify useful studies of data archived
15 under the Program that will advance under-
16 standing of the Nation’s energy and mineral re-
17 sources, geologic hazards, and engineering geol-
18 ogy.

19 (D) Review the progress of the Program in
20 archiving significant data and preventing the
21 loss of such data, and the scientific progress of
22 the studies funded under the Program.

23 (E) Include in the annual report to the
24 Secretary required under section 5(b)(3) of the
25 National Geologic Mapping Act of 1992 (43

1 U.S.C. 31d(b)(3)) an evaluation of the progress
2 of the Program toward fulfilling the purposes of
3 the Program under subsection (b).

4 (g) FINANCIAL ASSISTANCE.—

5 (1) ARCHIVE FACILITIES.—Subject to the avail-
6 ability of appropriations, the Secretary shall provide
7 financial assistance to a State agency that is des-
8 ignated under subsection (d)(2), for providing facili-
9 ties to archive energy material.

10 (2) STUDIES.—Subject to the availability of ap-
11 propriations, the Secretary shall provide financial as-
12 sistance to any State agency designated under sub-
13 section (d)(2) for studies that enhance under-
14 standing, interpretation, and use of materials
15 archived in the data archive system established
16 under subsection (d).

17 (3) FEDERAL SHARE.—The Federal share of
18 the cost of an activity carried out with assistance
19 under this subsection shall be no more than 50 per-
20 cent of the total cost of that activity.

21 (4) PRIVATE CONTRIBUTIONS.—The Secretary
22 shall apply to the non-Federal share of the cost of
23 an activity carried out with assistance under this
24 subsection the value of private contributions of prop-
25 erty and services used for that activity.

1 (h) REPORT.—The Secretary shall include in each re-
2 port under section 8 of the National Geologic Mapping Act
3 of 1992 (43 U.S.C. 31g)—

4 (1) a description of the status of the Program;

5 (2) an evaluation of the progress achieved in
6 developing the Program during the period covered by
7 the report; and

8 (3) any recommendations for legislative or other
9 action the Secretary considers necessary and appro-
10 priate to fulfill the purposes of the Program under
11 subsection (b).

12 (i) DEFINITIONS.—As used in this section:

13 (1) ADVISORY COMMITTEE.—The term “Advi-
14 sory Committee” means the advisory committee es-
15 tablished under section 5 of the National Geologic
16 Mapping Act of 1992 (43 U.S.C. 31d).

17 (2) SECRETARY.—The term “Secretary” means
18 the Secretary of the Interior acting through the Di-
19 rector of the United States Geological Survey.

20 (3) PROGRAM.—The term “Program” means
21 the National Energy Data Preservation Program
22 carried out under this section.

23 (4) SURVEY.—The term “Survey” means the
24 United States Geological Survey.

1 (j) MAINTENANCE OF STATE EFFORT.—It is the in-
2 tent of the Congress that the States not use this section
3 as an opportunity to reduce State resources applied to the
4 activities that are the subject of the Program.

5 (k) AUTHORIZATION OF APPROPRIATIONS.—There is
6 authorized to be appropriated to the Secretary
7 \$30,000,000 for each of fiscal years 2004 through 2008
8 for carrying out this section.

9 **SEC. 30212. COMPLIANCE WITH EXECUTIVE ORDER 13211;**
10 **ACTIONS CONCERNING REGULATIONS THAT**
11 **SIGNIFICANTLY AFFECT ENERGY SUPPLY,**
12 **DISTRIBUTION, OR USE.**

13 (a) REQUIREMENT.—The Secretary of the Interior
14 shall—

15 (1) require that before any person takes any ac-
16 tion that could have a significant adverse effect on
17 the supply of domestic energy resources from Fed-
18 eral public lands, the person shall comply with Exec-
19 utive Order No. 13211; and

20 (2) within 180 days after the date of the enact-
21 ment of this Act, publish guidance for purposes of
22 this section describing what constitutes a significant
23 adverse effect on the supply of domestic energy re-
24 sources under Executive Order No. 13211.

1 (b) MOU.—The Secretary of the Interior and the
 2 Secretary of Agriculture shall include in the memorandum
 3 of understanding under section 30208 provisions regard-
 4 ing implementation of subsection (a)(1) of this section.

5 **SEC. 30213. REIMBURSEMENT FOR COSTS OF NEPA ANAL-**
 6 **YSES, DOCUMENTATION, AND STUDIES.**

7 (a) IN GENERAL.—The Mineral Leasing Act (30
 8 U.S.C. 181 et seq.) is amended by inserting after section
 9 37 the following:

10 “REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES,
 11 DOCUMENTATION, AND STUDIES

12 “SEC. 38. (a) IN GENERAL.—The Secretary of the
 13 Interior may, through royalty credits, reimburse a person
 14 who is a lessee, operator, operating rights owner, or appli-
 15 cant for any lease under this Act for reasonable amounts
 16 paid by the person for preparation by the Secretary (or
 17 a contractor or other person selected by the Secretary) of
 18 any project-level analysis, documentation, or related study
 19 required under the National Environmental Policy Act of
 20 1969 (42 U.S.C. 4321 et seq.) with respect to the lease.

21 “(b) CONDITIONS.—The Secretary may provide reim-
 22 bursement under subsection (b) only if—

23 “(1) adequate funding to enable the Secretary
 24 to timely prepare the analysis, documentation, or re-
 25 lated study is not appropriated;

26 “(2) the person paid the costs voluntarily; and

1 “(3) the person maintains records of its costs
2 in accordance with regulations prescribed by the
3 Secretary.”.

4 (b) APPLICATION.—The amendment made by this
5 section shall apply with respect to any lease entered into
6 before, on, or after the date of the enactment of this Act.

7 (c) DEADLINE FOR REGULATIONS.—The Secretary of
8 the Interior shall issue regulations implementing the
9 amendment made by this section by not later than 90 days
10 after the date of the enactment of this Act.

11 **SEC. 30214. ALTERNATE ENERGY-RELATED USES ON THE**
12 **OUTER CONTINENTAL SHELF.**

13 (a) PURPOSES.—The purposes of this section are as
14 follows:

15 (1) To protect the economic and land use inter-
16 ests of the Federal Government in the management
17 of the Outer Continental Shelf for energy-related
18 and certain other purposes.

19 (2) To provide an administrative framework for
20 the oversight and management of energy-related ac-
21 tivities on the Outer Continental Shelf, consistent
22 with other applicable laws.

23 (3) To expedite projects to increase the produc-
24 tion, transmission, or conservation of energy on the
25 Outer Continental Shelf.

1 (4) To provide for interagency coordination in
2 the siting and permitting of energy-related activities
3 on the Outer Continental Shelf.

4 (5) To ensure that energy-related activities on
5 the Outer Continental Shelf are conducted in a man-
6 ner that provides for safety, protection of the envi-
7 ronment, prevention of waste, conservation of nat-
8 ural resources, protection of correlative rights, and
9 protection of national security interests.

10 (6) To authorize alternate uses of existing
11 structures and facilities previously permitted under
12 the Outer Continental Shelf Lands Act (43 U.S.C.
13 1331 note).

14 (7) To ensure that the Federal Government re-
15 ceives a fair return for any easement or right-of-way
16 granted under section 8(p) of the Outer Continental
17 Shelf Lands Act.

18 (b) AMENDMENT TO OUTER CONTINENTAL SHELF
19 LANDS ACT.—Section 8 of the Outer Continental Shelf
20 Lands Act (43 U.S.C. 1337) is amended by adding at the
21 end the following new subsection:

22 “(p) EASEMENTS OR RIGHTS-OF-WAY FOR ENERGY
23 AND RELATED PURPOSES.—

24 “(1) The Secretary, in consultation with the
25 Secretary of the Department in which the Coast

1 Guard is operating and other relevant departments
2 and agencies of the Federal Government, may grant
3 an easement or right-of-way on the Outer Conti-
4 nental Shelf for activities not otherwise authorized
5 in this Act, the Deepwater Port Act of 1974 (33
6 U.S.C. 1501 et seq.), or the Ocean Thermal Energy
7 Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or
8 other applicable law when such activities—

9 “(A) support exploration, development,
10 production, transportation, or storage of oil,
11 natural gas, or other minerals;

12 “(B) produce or support production, trans-
13 portation, or transmission of energy from
14 sources other than oil and gas; or

15 “(C) use facilities currently or previously
16 used for activities authorized under this Act.

17 “(2)(A) The Secretary shall establish reason-
18 able forms of annual or one-time payments for any
19 easement or right-of-way granted under this sub-
20 section. Such payments shall not be assessed on the
21 basis of throughput or production. The Secretary
22 may establish fees, rentals, bonus, or other payments
23 by rule or by agreement with the party to whom the
24 easement or right-of-way is granted.

1 “(B) Before exercising the authority granted
2 under this subsection, the Secretary shall consult
3 with the Secretary of Defense and other appropriate
4 agencies concerning issues related to national secu-
5 rity and navigational obstruction.

6 “(C) The Secretary is authorized to issue an
7 easement or right-of-way for energy and related pur-
8 poses as described in paragraph (1) on a competitive
9 or noncompetitive basis. In determining whether
10 such easement or right-of-way shall be granted com-
11 petitively or noncompetitively, the Secretary shall
12 consider such factors as prevention of waste and
13 conservation of natural resources, economic viability
14 of an energy project, protection of the environment,
15 national interest, national security, human safety,
16 protection of correlative rights, and potential return
17 for the easement or right-of-way.

18 “(3) The Secretary, in consultation with the
19 Secretary of the Department in which the Coast
20 Guard is operating and other relevant departments
21 and agencies of the Federal Government and af-
22 fected States, shall prescribe any necessary regula-
23 tions to assure safety, protection of the environment,
24 prevention of waste, and conservation of the natural
25 resources of the Outer Continental Shelf, protection

1 of national security interests, and protection of cor-
2 relative rights therein.

3 “(4) The Secretary shall require the holder of
4 an easement or right-of-way granted under this sub-
5 section to furnish a surety bond or other form of se-
6 curity, as prescribed by the Secretary, and to comply
7 with such other requirements as the Secretary may
8 deem necessary to protect the interests of the United
9 States.

10 “(5) Nothing in this subsection shall be con-
11 strued to displace, supersede, limit, or modify the ju-
12 risdiction, responsibility, or authority of any Federal
13 or State agency under any other Federal law.

14 “(6) This subsection shall not apply to any area
15 on the Outer Continental Shelf designated as a Na-
16 tional Marine Sanctuary.”.

17 (c) CONFORMING AMENDMENT.—The text of the
18 heading for section 8 of the Outer Continental Shelf
19 Lands Act is amended to read as follows: “LEASES, EASE-
20 MENTS, AND RIGHTS-OF-WAY ON THE OUTER CONTI-
21 NENTAL SHELF.”.

1 **SEC. 30215. DEADLINE FOR DECISION ON APPEALS OF CON-**
2 **SISTENCY DETERMINATIONS UNDER THE**
3 **COASTAL ZONE MANAGEMENT ACT OF 1972.**

4 (a) IN GENERAL.—Section 319 of the Coastal Zone
5 Management Act of 1972 (16 U.S.C. 1465) is amended
6 to read as follows:

7 “APPEALS TO THE SECRETARY

8 “SEC. 319. (a) NOTICE.—The Secretary shall publish
9 an initial notice in the Federal Register within 30 days
10 after the date of the filing of any appeal to the Secretary
11 of a consistency determination under section 307.

12 “(b) CLOSURE OF RECORD.—(1) No later than the
13 end of 360-day period beginning on the date of publication
14 of an initial notice under subsection (a), the Secretary
15 shall receive no more filings on the appeal and the record
16 of decision regarding the appeal shall be closed.

17 “(2) Upon the closure of the record of decision, the
18 Secretary shall immediately publish a notice that the
19 record of decision has been closed.

20 “(3) The Secretary may extend the period specified
21 in paragraph (1) with respect to an appeal—

22 “(A) in accordance with the mutual agreement
23 of the parties to the appeal; or

24 “(B) as needed to complete the development of
25 any environmental analyses required under the Na-

1 tional Environmental Policy Act of 1969 (42 U.S.C.
2 4331 et seq.).

3 “(c) DEADLINE FOR DECISION.—The Secretary shall
4 issue a decision in any appeal filed under section 307 no
5 later than 90 days after the publication of a notice under
6 subsection (b)(2).

7 “(d) APPLICATION.— This section applies to appeals
8 initiated by the Secretary and appeals filed by an appli-
9 cant.”.

10 (b) APPLICATION.—The amendment made by sub-
11 section (a)—

12 (1) shall apply with respect to any appeal initi-
13 ated or filed on or after the date of the enactment
14 of this Act; and

15 (2) shall not affect any appeal initiated or filed
16 before the date of the enactment of this Act.

17 **SEC. 30216. TASK FORCE ON ENERGY PROJECT STREAM-**
18 **LINING.**

19 (a) FINDINGS.—The Congress finds that—

20 (1) increased production and transmission of
21 energy in a safe and environmentally sound manner
22 is essential to the well-being of the American people;

23 (2) on May 18, 2001, President George W.
24 Bush signed Executive Order No. 13212 requiring
25 agencies to expedite their review of permits of other

1 actions as necessary to accelerate the completion of
2 energy-related projects, while maintaining safety,
3 public health, and environmental protections; and

4 (3) Executive Order No. 13212 established an
5 interagency task force chaired by the Chairman of
6 the Council on Environmental Quality to monitor
7 and assist agencies in their efforts to expedite review
8 of actions consistent with the Executive order, and
9 to monitor and assist agencies in setting up appro-
10 priate mechanisms to coordinate Federal, State,
11 tribal, and local permitting in geographic areas
12 where increased permitting activity is expected.

13 (b) SENSE OF CONGRESS.—It is the sense of the
14 Congress that the Task Force established pursuant to Ex-
15 ecutive Order No. 13212 should remain in existence until
16 such time as the President finds that the needs for which
17 it was established have been met.

18 **SEC. 30217. PILOT PROGRAM ON NORTHERN ROCKY MOUN-**
19 **TAINS ENERGY RESOURCE MANAGEMENT.**

20 (a) FINDINGS.—The Congress finds that the task
21 force established by President George W. Bush by the
22 issuance of Executive Order No. 13212, and headed by
23 the Chairman of the Council on Environmental Quality,
24 has developed a pilot project the goals of which are—

1 (1) to reduce conflict, uncertainty, and the time
2 involved in making decisions on energy resource
3 management in the Northern Rocky Mountains;

4 (2) to establish a mechanism to provide for the
5 coordination of Federal and State policy guidance
6 regarding the development of regional energy re-
7 sources and their transmission to markets;

8 (3) to institutionalize early collaboration and
9 participation of all parties involved in regional deci-
10 sions on environmental, economic and energy issues
11 related to the exploration, development, and produc-
12 tion of energy resources; and

13 (4) to take a long-term and regional view on
14 how best to manage the energy resources in the
15 Northern Rocky Mountains.

16 (b) SENSE OF THE CONGRESS.—It is the sense of
17 the Congress that the task force should carry out this pilot
18 project and report to the Congress no later than 36
19 months after the date of enactment of this Act on the
20 progress it has made in accomplishing the goals set forth
21 in subsection (a) of this section.

22 **SEC. 30218. ENERGY DEVELOPMENT FACILITATOR STUDY.**

23 (a) IN GENERAL.—The Chairman of the Council on
24 Environmental Quality shall conduct a study to determine
25 the feasibility of establishing under the Council the posi-

1 tion of Facilitator for Energy Development, to coordinate
2 Federal agency actions relating to energy project permit-
3 ting. The study shall consider, among other matters—

4 (1) the ways in which a facilitator can facilitate
5 the long-term coordination of energy projects on
6 Federal lands; and

7 (2) the role of a facilitator in ensuring that the
8 questions or concerns of permit applicants and other
9 persons involved in energy projects are addressed in
10 the agency.

11 (b) REPORT.—Not later than 12 months after the
12 date of enactment of this section, the Chairman shall sub-
13 mit a report to the Committee on Resources of the House
14 of Representatives and the Committee on Energy and
15 Natural Resources of the Senate detailing the findings of
16 the study required by subsection (a), and including any
17 legislative recommendations of the Chairman with respect
18 to the establishment of the position studied.

19 **SEC. 30219. COMBINED HYDROCARBON LEASING.**

20 (a) SPECIAL PROVISIONS REGARDING LEASING.—
21 Section 17(b)(2) of the Mineral Leasing Act (30 U.S.C.
22 226(b)(2)) is amended—

23 (1) by inserting “(A)” after “(2)”; and

24 (2) by adding at the end the following:

1 “(B) For any area that contains any combination of
2 tar sand and oil or gas (or both), the Secretary may issue
3 under this Act, separately—

4 “(i) a lease for exploration for and extraction of
5 tar sand; and

6 “(ii) a lease for exploration for and development
7 of oil and gas.

8 “(C) A lease issued for tar sand shall be issued using
9 the same bidding process, annual rental, and posting pe-
10 riod as a lease issued for oil and gas, except that the min-
11 imum acceptable bid required for a lease issued for tar
12 sand shall be \$2 per acre.

13 “(D) The Secretary may waive, suspend, or alter any
14 requirement under section 26 that a permittee under a
15 permit authorizing prospecting for tar sand must exercise
16 due diligence, to promote any resource covered by a com-
17 bined hydrocarbon lease.”.

18 (b) CONFORMING AMENDMENT.—Section
19 17(b)(1)(B) of the Mineral Leasing Act (30 U.S.C.
20 226(b)(1)(B)) is amended in the second sentence by in-
21 serting “, subject to paragraph (2)(B),” after “The Sec-
22 retary”.

23 (c) REGULATIONS.—Within 45 days after the date of
24 the enactment of this Act, the Secretary of the Interior
25 shall issue final regulations to implement this section.

1 **SEC. 30220. ROYALTY PAYMENTS UNDER LEASES UNDER**
2 **THE OUTER CONTINENTAL SHELF LANDS**
3 **ACT.**

4 (a) ROYALTY RELIEF.—

5 (1) IN GENERAL.—For purposes of providing
6 compensation for lessees and a State for which
7 amounts are authorized by section 6004(c) of the Oil
8 Pollution Act of 1980 (Public Law 101–380), a les-
9 see may withhold from payment any royalty due and
10 owing to the United States under any lease under
11 the Outer Continental Shelf Lands Act (43 U.S.C.
12 1301 et seq.) for offshore oil or gas production from
13 a covered lease tract if, on or before the date that
14 the payment is due and payable to the United
15 States, the lessee makes a payment to the State of
16 44 cents for every \$1 of royalty withheld.

17 (2) TREATMENT OF WITHHELD AMOUNTS.—
18 Any royalty withheld by a lessee in accordance with
19 this section shall be treated as paid for purposes of
20 satisfaction of the royalty obligations of the lessee to
21 the United States.

22 (3) CERTIFICATION OF WITHHELD AMOUNTS.—
23 The Secretary of the Treasury shall—

24 (A) determine the amount of royalty with-
25 held by a lessee under this section; and

1 (B) promptly publish a certification when
2 the total amount of royalty withheld by the les-
3 see under this section is equal to the lessee's
4 share of the total drainage claim for the West
5 Delta field (with interest) as described at page
6 47 of Senate Report number 101-534.

7 (b) PERIOD OF ROYALTY RELIEF.—Subsection (a)
8 shall apply to royalty amounts that are due and payable
9 in the period beginning on January 1, 2003, and ending
10 on the date on which the Secretary publishes a certifi-
11 cation under subsection (a)(3)(B).

12 (c) DEFINITIONS.—As used in this section:

13 (1) COVERED LEASE TRACT.—The term “cov-
14 ered lease tract” means a leased tract (or portion of
15 a leased tract)—

16 (A) lying seaward of the zone defined and
17 governed by section 8(g) of the Outer Conti-
18 nental Shelf Lands Act (43 U.S.C. 1337(g)); or

19 (B) lying within such zone but to which
20 such section does not apply.

21 (2) LESSEE.—The term “lessee” means a per-
22 son (including a successor or assign of a person)
23 that, on the date of the enactment of the Oil Pollu-
24 tion Act of 1980, was a lessee referred to in section
25 6004(c) of that Act (as in effect on that date of the

enactment), but did not hold lease rights in Federal offshore lease OCS-G-5669.

TITLE III—BIOMASS ENERGY

SEC. 30301. GRANTS TO IMPROVE THE COMMERCIAL VALUE OF FOREST BIOMASS FOR ELECTRIC ENERGY, USEFUL HEAT, TRANSPORTATION FUELS, PE- TROLEUM-BASED PRODUCT SUBSTITUTES, AND OTHER COMMERCIAL PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Thousands of communities in the United States, many located near Federal lands, are at risk to wildfire. Approximately 190,000,000 acres of land managed by the Secretary of Agriculture and the Secretary of the Interior are at risk of catastrophic fire in the near future. The accumulation of heavy forest fuel loads continues to increase as a result of disease, insect infestations, and drought, further raising the risk of fire each year.

(2) In addition, more than 70,000,000 acres across all land ownerships are at risk to higher than normal mortality over the next 15 years from insect infestation and disease. High levels of tree mortality from insects and disease result in increased fire risk, loss of old growth, degraded watershed conditions, and changes in species diversity and productivity, as

1 well as diminished fish and wildlife habitat and de-
2 creased timber values.

3 (3) Preventive treatments such as removing fuel
4 loading, ladder fuels, and hazard trees, planting
5 proper species mix and restoring and protecting
6 early successional habitat, and other specific restora-
7 tion treatments designed to reduce the susceptibility
8 of forest land, woodland, and rangeland to insect
9 outbreaks, disease, and catastrophic fire present the
10 greatest opportunity for long-term forest health by
11 creating a mosaic of species-mix and age distribu-
12 tion. Such prevention treatments are widely acknowl-
13 edged to be more successful and cost effective than
14 suppression treatments in the case of insects, dis-
15 ease, and fire.

16 (4) The by-products of preventive treatment
17 (wood, brush, thinnings, chips, slash, and other haz-
18 ardous fuels) removed from forest lands, woodlands
19 and rangelands represent an abundant supply of bio-
20 mass for biomass-to-energy facilities and raw mate-
21 rial for business. There are currently few markets
22 for the extraordinary volumes of by-products being
23 generated as a result of the necessary large-scale
24 preventive treatment activities.

25 (5) The United States should—

1 (A) promote economic and entrepreneurial
2 opportunities in using by-products removed
3 through preventive treatment activities related
4 to hazardous fuels reduction, disease, and insect
5 infestation; and

6 (B) develop and expand markets for tradi-
7 tionally underused wood and biomass as an out-
8 let for by-products of preventive treatment ac-
9 tivities.

10 (b) DEFINITIONS.—In this section:

11 (1) BIOMASS.—The term “biomass” means
12 trees and woody plants, including limbs, tops, nee-
13 dles, and other woody parts, and by-products of pre-
14 ventive treatment, such as wood, brush, thinnings,
15 chips, and slash, that are removed—

16 (A) to reduce hazardous fuels; or

17 (B) to reduce the risk of or to contain dis-
18 ease or insect infestation.

19 (2) INDIAN TRIBE.—The term “Indian tribe”
20 has the meaning given the term in section 4(e) of
21 the Indian Self-Determination and Education Assist-
22 ance Act (25 U.S.C. 450b(e)).

23 (3) PERSON.—The term “person” includes—

24 (A) an individual;

1 (B) a community (as determined by the
2 Secretary concerned);

3 (C) an Indian tribe;

4 (D) a small business, micro-business, or a
5 corporation that is incorporated in the United
6 States; and

7 (E) a nonprofit organization.

8 (4) PREFERRED COMMUNITY.—The term “pre-
9 ferred community” means—

10 (A) any town, township, municipality, or
11 other similar unit of local government (as deter-
12 mined by the Secretary concerned) that—

13 (i) has a population of not more than
14 50,000 individuals; and

15 (ii) the Secretary concerned, in the
16 sole discretion of the Secretary concerned,
17 determines contains or is located near
18 land, the condition of which is at signifi-
19 cant risk of catastrophic wildfire, disease,
20 or insect infestation or which suffers from
21 disease or insect infestation; or

22 (B) any county that—

23 (i) is not contained within a metro-
24 politan statistical area; and

1 (ii) the Secretary concerned, in the
2 sole discretion of the Secretary concerned,
3 determines contains or is located near
4 land, the condition of which is at signifi-
5 cant risk of catastrophic wildfire, disease,
6 or insect infestation or which suffers from
7 disease or insect infestation.

8 (5) SECRETARY CONCERNED.—The term “Sec-
9 retary concerned” means—

10 (A) the Secretary of Agriculture with re-
11 spect to National Forest System lands; and

12 (B) the Secretary of the Interior with re-
13 spect to Federal lands under the jurisdiction of
14 the Secretary of the Interior and Indian lands.

15 (c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

16 (1) IN GENERAL.—The Secretary concerned
17 may make grants to any person that owns or oper-
18 ates a facility that uses biomass as a raw material
19 to produce electric energy, sensible heat, transpor-
20 tation fuels, or substitutes for petroleum-based prod-
21 ucts to offset the costs incurred to purchase biomass
22 for use by such facility.

23 (2) GRANT AMOUNTS.—A grant under this sub-
24 section may not exceed \$20 per green ton of biomass
25 delivered.

1 (3) MONITORING OF GRANT RECIPIENT ACTIVITIES.—As a condition of a grant under this sub-
2 TIES.—As a condition of a grant under this sub-
3 section, the grant recipient shall keep such records
4 as the Secretary concerned may require to fully and
5 correctly disclose the use of the grant funds and all
6 transactions involved in the purchase of biomass.
7 Upon notice by a representative of the Secretary
8 concerned, the grant recipient shall afford the rep-
9 resentative reasonable access to the facility that pur-
10 chases or uses biomass and an opportunity to exam-
11 ine the inventory and records of the facility.

12 (d) IMPROVED BIOMASS USE GRANT PROGRAM.—

13 (1) IN GENERAL.—The Secretary concerned
14 may make grants to persons to offset the cost of
15 projects to develop or research opportunities to im-
16 prove the use of, or add value to, biomass. In mak-
17 ing such grants, the Secretary concerned shall give
18 preference to persons in preferred communities.

19 (2) SELECTION.—The Secretary concerned shall
20 select a grant recipient under paragraph (1) after
21 giving consideration to the anticipated public bene-
22 fits of the project, including the potential to develop
23 thermal or electric energy resources or affordable en-
24 ergy, opportunities for the creation or expansion of

1 small businesses and micro-businesses, and the po-
2 tential for new job creation.

3 (3) GRANT AMOUNT.—A grant under this sub-
4 section may not exceed \$100,000.

5 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
6 authorized to be appropriated \$50,000,000 for each of the
7 fiscal years 2004 through 2014 to carry out this section.

8 (f) REPORT.—Not later than October 1, 2010, the
9 Secretary of Agriculture, in consultation with the Sec-
10 retary of the Interior, shall submit to the Committee on
11 Energy and Natural Resources and the Committee on Ag-
12 riculture, Nutrition, and Forestry of the Senate and the
13 Committee on Resources and the Committee on Agri-
14 culture of the House of Representatives a report describ-
15 ing the results of the grant programs authorized by this
16 section. The report shall include the following:

17 (1) An identification of the size, type, and the
18 use of biomass by persons that receive grants under
19 this section.

20 (2) The distance between the land from which
21 the biomass was removed and the facility that used
22 the biomass.

23 (3) The economic impacts, particularly new job
24 creation, resulting from the grants to and operation
25 of the eligible operations.

1 **TITLE IV—ARCTIC COASTAL**
2 **PLAIN DOMESTIC ENERGY**

3 **SEC. 30401. SHORT TITLE.**

4 This title may be cited as the “Arctic Coastal Plain
5 Domestic Energy Security Act of 2003”.

6 **SEC. 30402. DEFINITIONS.**

7 In this title:

8 (1) COASTAL PLAIN.—The term “Coastal
9 Plain” means that area identified as such in the
10 map entitled “Arctic National Wildlife Refuge”,
11 dated August 1980, as referenced in section 1002(b)
12 of the Alaska National Interest Lands Conservation
13 Act of 1980 (16 U.S.C. 3142(b)(1)), comprising ap-
14 proximately 1,549,000 acres, and as described in ap-
15 pendix I to part 37 of title 50, Code of Federal Reg-
16 ulations.

17 (2) SECRETARY.—The term “Secretary”, except
18 as otherwise provided, means the Secretary of the
19 Interior or the Secretary’s designee.

20 **SEC. 30403. LEASING PROGRAM FOR LANDS WITHIN THE**
21 **COASTAL PLAIN.**

22 (a) IN GENERAL.—The Secretary shall take such ac-
23 tions as are necessary—

24 (1) to establish and implement in accordance
25 with this Act a competitive oil and gas leasing pro-

1 gram under the Mineral Leasing Act (30 U.S.C. 181
2 et seq.) that will result in an environmentally sound
3 program for the exploration, development, and pro-
4 duction of the oil and gas resources of the Coastal
5 Plain; and

6 (2) to administer the provisions of this title
7 through regulations, lease terms, conditions, restric-
8 tions, prohibitions, stipulations, and other provisions
9 that ensure the oil and gas exploration, development,
10 and production activities on the Coastal Plain will
11 result in no significant adverse effect on fish and
12 wildlife, their habitat, subsistence resources, and the
13 environment, and including, in furtherance of this
14 goal, by requiring the application of the best com-
15 mercially available technology for oil and gas explo-
16 ration, development, and production to all explo-
17 ration, development, and production operations
18 under this title in a manner that ensures the receipt
19 of fair market value by the public for the mineral re-
20 sources to be leased.

21 (b) REPEAL.—Section 1003 of the Alaska National
22 Interest Lands Conservation Act of 1980 (16 U.S.C.
23 3143) is repealed.

24 (c) COMPLIANCE WITH REQUIREMENTS UNDER CER-
25 TAIN OTHER LAWS.—

1 (1) COMPATIBILITY.—For purposes of the Na-
2 tional Wildlife Refuge System Administration Act of
3 1966, the oil and gas leasing program and activities
4 authorized by this section in the Coastal Plain are
5 deemed to be compatible with the purposes for which
6 the Arctic National Wildlife Refuge was established,
7 and that no further findings or decisions are re-
8 quired to implement this determination.

9 (2) ADEQUACY OF THE DEPARTMENT OF THE
10 INTERIOR’S LEGISLATIVE ENVIRONMENTAL IMPACT
11 STATEMENT.—The “Final Legislative Environ-
12 mental Impact Statement” (April 1987) on the
13 Coastal Plain prepared pursuant to section 1002 of
14 the Alaska National Interest Lands Conservation
15 Act of 1980 (16 U.S.C. 3142) and section 102(2)(C)
16 of the National Environmental Policy Act of 1969
17 (42 U.S.C. 4332(2)(C)) is deemed to satisfy the re-
18 quirements under the National Environmental Policy
19 Act of 1969 that apply with respect to actions au-
20 thorized to be taken by the Secretary to develop and
21 promulgate the regulations for the establishment of
22 a leasing program authorized by this title before the
23 conduct of the first lease sale.

24 (3) COMPLIANCE WITH NEPA FOR OTHER AC-
25 TIONS.—Before conducting the first lease sale under

1 this title, the Secretary shall prepare an environ-
2 mental impact statement under the National Envi-
3 ronmental Policy Act of 1969 with respect to the ac-
4 tions authorized by this title that are not referred to
5 in paragraph (2). Notwithstanding any other law,
6 the Secretary is not required to identify nonleasing
7 alternative courses of action or to analyze the envi-
8 ronmental effects of such courses of action. The Sec-
9 retary shall only identify a preferred action for such
10 leasing and a single leasing alternative, and analyze
11 the environmental effects and potential mitigation
12 measures for those two alternatives. The identifica-
13 tion of the preferred action and related analysis for
14 the first lease sale under this title shall be completed
15 within 18 months after the date of the enactment of
16 this Act. The Secretary shall only consider public
17 comments that specifically address the Secretary's
18 preferred action and that are filed within 20 days
19 after publication of an environmental analysis. Not-
20 withstanding any other law, compliance with this
21 paragraph is deemed to satisfy all requirements for
22 the analysis and consideration of the environmental
23 effects of proposed leasing under this title.

1 (d) RELATIONSHIP TO STATE AND LOCAL AUTHOR-
2 ITY.—Nothing in this title shall be considered to expand
3 or limit State and local regulatory authority.

4 (e) SPECIAL AREAS.—

5 (1) IN GENERAL.—The Secretary, after con-
6 sultation with the State of Alaska, the city of
7 Kaktovik, and the North Slope Borough, may des-
8 ignate up to a total of 45,000 acres of the Coastal
9 Plain as a Special Area if the Secretary determines
10 that the Special Area is of such unique character
11 and interest so as to require special management
12 and regulatory protection. The Secretary shall des-
13 ignate as such a Special Area the Sadlerochit Spring
14 area, comprising approximately 4,000 acres as de-
15 picted on the map referred to in section 402(1).

16 (2) MANAGEMENT.—Each such Special Area
17 shall be managed so as to protect and preserve the
18 area's unique and diverse character including its
19 fish, wildlife, and subsistence resource values.

20 (3) EXCLUSION FROM LEASING OR SURFACE
21 OCCUPANCY.—The Secretary may exclude any Spe-
22 cial Area from leasing. If the Secretary leases a Spe-
23 cial Area, or any part thereof, for purposes of oil
24 and gas exploration, development, production, and

1 related activities, there shall be no surface occu-
2 pancy of the lands comprising the Special Area.

3 (4) DIRECTIONAL DRILLING.—Notwithstanding
4 the other provisions of this subsection, the Secretary
5 may lease all or a portion of a Special Area under
6 terms that permit the use of horizontal drilling tech-
7 nology from sites on leases located outside the area.

8 (f) LIMITATION ON CLOSED AREAS.—The Sec-
9 retary's sole authority to close lands within the Coastal
10 Plain to oil and gas leasing and to exploration, develop-
11 ment, and production is that set forth in this title.

12 (g) REGULATIONS.—

13 (1) IN GENERAL.—The Secretary shall pre-
14 scribe such regulations as may be necessary to carry
15 out this title, including rules and regulations relating
16 to protection of the fish and wildlife, their habitat,
17 subsistence resources, and environment of the Coast-
18 al Plain, by no later than 15 months after the date
19 of the enactment of this Act.

20 (2) REVISION OF REGULATIONS.—The Sec-
21 retary shall periodically review and, if appropriate,
22 revise the rules and regulations issued under sub-
23 section (a) to reflect any significant biological, envi-
24 ronmental, or engineering data that come to the Sec-
25 retary's attention.

1 **SEC. 30404. LEASE SALES.**

2 (a) IN GENERAL.—Lands may be leased pursuant to
3 this title to any person qualified to obtain a lease for de-
4 posits of oil and gas under the Mineral Leasing Act (30
5 U.S.C. 181 et seq.).

6 (b) PROCEDURES.—The Secretary shall, by regula-
7 tion, establish procedures for—

8 (1) receipt and consideration of sealed nomina-
9 tions for any area in the Coastal Plain for inclusion
10 in, or exclusion (as provided in subsection (c)) from,
11 a lease sale;

12 (2) the holding of lease sales after such nomina-
13 tion process; and

14 (3) public notice of and comment on designa-
15 tion of areas to be included in, or excluded from, a
16 lease sale.

17 (c) LEASE SALE BIDS.—Bidding for leases under
18 this title shall be by sealed competitive cash bonus bids.

19 (d) ACREAGE MINIMUM IN FIRST SALE.—In the first
20 lease sale under this title, the Secretary shall offer for
21 lease those tracts the Secretary considers to have the
22 greatest potential for the discovery of hydrocarbons, tak-
23 ing into consideration nominations received pursuant to
24 subsection (b)(1), but in no case less than 200,000 acres.

25 (e) TIMING OF LEASE SALES.—The Secretary
26 shall—

1 (1) conduct the first lease sale under this title
2 within 22 months after the date of the enactment of
3 this Act; and

4 (2) conduct additional sales so long as sufficient
5 interest in development exists to warrant, in the Sec-
6 retary's judgment, the conduct of such sales.

7 **SEC. 30405. GRANT OF LEASES BY THE SECRETARY.**

8 (a) IN GENERAL.—The Secretary may grant to the
9 highest responsible qualified bidder in a lease sale con-
10 ducted pursuant to section 30404 any lands to be leased
11 on the Coastal Plain upon payment by the lessee of such
12 bonus as may be accepted by the Secretary.

13 (b) SUBSEQUENT TRANSFERS.—No lease issued
14 under this title may be sold, exchanged, assigned, sublet,
15 or otherwise transferred except with the approval of the
16 Secretary. Prior to any such approval the Secretary shall
17 consult with, and give due consideration to the views of,
18 the Attorney General.

19 **SEC. 30406. LEASE TERMS AND CONDITIONS.**

20 (a) IN GENERAL.—An oil or gas lease issued pursu-
21 ant to this title shall—

22 (1) provide for the payment of a royalty of not
23 less than 12½ percent in amount or value of the
24 production removed or sold from the lease, as deter-

1 mined by the Secretary under the regulations appli-
2 cable to other Federal oil and gas leases;

3 (2) provide that the Secretary may close, on a
4 seasonal basis, portions of the Coastal Plain to ex-
5 ploratory drilling activities as necessary to protect
6 caribou calving areas and other species of fish and
7 wildlife;

8 (3) require that the lessee of lands within the
9 Coastal Plain shall be fully responsible and liable for
10 the reclamation of lands within the Coastal Plain
11 and any other Federal lands that are adversely af-
12 fected in connection with exploration, development,
13 production, or transportation activities conducted
14 under the lease and within the Coastal Plain by the
15 lessee or by any of the subcontractors or agents of
16 the lessee;

17 (4) provide that the lessee may not delegate or
18 convey, by contract or otherwise, the reclamation re-
19 sponsibility and liability to another person without
20 the express written approval of the Secretary;

21 (5) provide that the standard of reclamation for
22 lands required to be reclaimed under this title shall
23 be, as nearly as practicable, a condition capable of
24 supporting the uses which the lands were capable of
25 supporting prior to any exploration, development, or

1 production activities, or upon application by the les-
2 see, to a higher or better use as approved by the
3 Secretary;

4 (6) contain terms and conditions relating to
5 protection of fish and wildlife, their habitat, and the
6 environment as required pursuant to section
7 30403(a)(2);

8 (7) provide that the lessee, its agents, and its
9 contractors use best efforts to provide a fair share,
10 as determined by the level of obligation previously
11 agreed to in the 1974 agreement implementing sec-
12 tion 29 of the Federal Agreement and Grant of
13 Right of Way for the Operation of the Trans-Alaska
14 Pipeline, of employment and contracting for Alaska
15 Natives and Alaska Native Corporations from
16 throughout the State;

17 (8) prohibit the export of oil produced under
18 the lease; and

19 (9) contain such other provisions as the Sec-
20 retary determines necessary to ensure compliance
21 with the provisions of this title and the regulations
22 issued under this title.

23 (b) PROJECT LABOR AGREEMENTS.—The Secretary,
24 as a term and condition of each lease under this title and
25 in recognizing the Government's proprietary interest in

1 labor stability and in the ability of construction labor and
2 management to meet the particular needs and conditions
3 of projects to be developed under the leases issued pursu-
4 ant to this title and the special concerns of the parties
5 to such leases, shall require that the lessee and its agents
6 and contractors negotiate to obtain a project labor agree-
7 ment for the employment of laborers and mechanics on
8 production, maintenance, and construction under the
9 lease.

10 **SEC. 30407. COASTAL PLAIN ENVIRONMENTAL PROTEC-**
11 **TION.**

12 (a) NO SIGNIFICANT ADVERSE EFFECT STANDARD
13 TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.—
14 The Secretary shall, consistent with the requirements of
15 section 30403, administer the provisions of this title
16 through regulations, lease terms, conditions, restrictions,
17 prohibitions, stipulations, and other provisions that—

18 (1) ensure the oil and gas exploration, develop-
19 ment, and production activities on the Coastal Plain
20 will result in no significant adverse effect on fish
21 and wildlife, their habitat, and the environment;

22 (2) require the application of the best commer-
23 cially available technology for oil and gas explo-
24 ration, development, and production on all new ex-

1 ploration, development, and production operations;
2 and

3 (3) ensure that the maximum amount of sur-
4 face acreage covered by production and support fa-
5 cilities, including airstrips and any areas covered by
6 gravel berms or piers for support of pipelines, does
7 not exceed 2,000 acres on the Coastal Plain.

8 (b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—

9 The Secretary shall also require, with respect to any pro-
10 posed drilling and related activities, that—

11 (1) a site-specific analysis be made of the prob-
12 able effects, if any, that the drilling or related activi-
13 ties will have on fish and wildlife, their habitat, and
14 the environment;

15 (2) a plan be implemented to avoid, minimize,
16 and mitigate (in that order and to the extent prac-
17 ticable) any significant adverse effect identified
18 under paragraph (1); and

19 (3) the development of the plan shall occur
20 after consultation with the agency or agencies hav-
21 ing jurisdiction over matters mitigated by the plan.

22 (c) REGULATIONS TO PROTECT COASTAL PLAIN
23 FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS,
24 AND THE ENVIRONMENT.—Before implementing the leas-
25 ing program authorized by this title, the Secretary shall

1 prepare and promulgate regulations, lease terms, condi-
2 tions, restrictions, prohibitions, stipulations, and other
3 measures designed to ensure that the activities undertaken
4 on the Coastal Plain under this title are conducted in a
5 manner consistent with the purposes and environmental
6 requirements of this title.

7 (d) COMPLIANCE WITH FEDERAL AND STATE ENVI-
8 RONMENTAL LAWS AND OTHER REQUIREMENTS.—The
9 proposed regulations, lease terms, conditions, restrictions,
10 prohibitions, and stipulations for the leasing program
11 under this title shall require compliance with all applicable
12 provisions of Federal and State environmental law and
13 shall also require the following:

14 (1) Standards at least as effective as the safety
15 and environmental mitigation measures set forth in
16 items 1 through 29 at pages 167 through 169 of the
17 “Final Legislative Environmental Impact State-
18 ment” (April 1987) on the Coastal Plain.

19 (2) Seasonal limitations on exploration, develop-
20 ment, and related activities, where necessary, to
21 avoid significant adverse effects during periods of
22 concentrated fish and wildlife breeding, denning,
23 nesting, spawning, and migration.

24 (3) That exploration activities, except for sur-
25 face geological studies, be limited to the period be-

1 tween approximately November 1 and May 1 each
2 year and that exploration activities shall be sup-
3 ported by ice roads, winter trails with adequate snow
4 cover, ice pads, ice airstrips, and air transport meth-
5 ods, except that such exploration activities may
6 occur at other times, if the Secretary finds that such
7 exploration will have no significant adverse effect on
8 the fish and wildlife, their habitat, and the environ-
9 ment of the Coastal Plain.

10 (4) Design safety and construction standards
11 for all pipelines and any access and service roads,
12 that—

13 (A) minimize, to the maximum extent pos-
14 sible, adverse effects upon the passage of mi-
15 gratory species such as caribou; and

16 (B) minimize adverse effects upon the flow
17 of surface water by requiring the use of cul-
18 verts, bridges, and other structural devices.

19 (5) Prohibitions on public access and use on all
20 pipeline access and service roads.

21 (6) Stringent reclamation and rehabilitation re-
22 quirements, consistent with the standards set forth
23 in this title, requiring the removal from the Coastal
24 Plain of all oil and gas development and production
25 facilities, structures, and equipment upon completion

1 of oil and gas production operations, except that the
2 Secretary may exempt from the requirements of this
3 paragraph those facilities, structures, or equipment
4 that the Secretary determines would assist in the
5 management of the Arctic National Wildlife Refuge
6 and that are donated to the United States for that
7 purpose.

8 (7) Appropriate prohibitions or restrictions on
9 access by all modes of transportation.

10 (8) Appropriate prohibitions or restrictions on
11 sand and gravel extraction.

12 (9) Consolidation of facility siting.

13 (10) Appropriate prohibitions or restrictions on
14 use of explosives.

15 (11) Avoidance, to the extent practicable, of
16 springs, streams, and river system; the protection of
17 natural surface drainage patterns, wetlands, and ri-
18 parian habitats; and the regulation of methods or
19 techniques for developing or transporting adequate
20 supplies of water for exploratory drilling.

21 (12) Avoidance or reduction of air traffic-re-
22 lated disturbance to fish and wildlife.

23 (13) Treatment and disposal of hazardous and
24 toxic wastes, solid wastes, reserve pit fluids, drilling
25 muds and cuttings, and domestic wastewater, includ-

1 ing an annual waste management report, a haz-
2 ardous materials tracking system, and a prohibition
3 on chlorinated solvents, in accordance with applica-
4 ble Federal and State environmental law.

5 (14) Fuel storage and oil spill contingency plan-
6 ning.

7 (15) Research, monitoring, and reporting re-
8 quirements.

9 (16) Field crew environmental briefings.

10 (17) Avoidance of significant adverse effects
11 upon subsistence hunting, fishing, and trapping by
12 subsistence users.

13 (18) Compliance with applicable air and water
14 quality standards.

15 (19) Appropriate seasonal and safety zone des-
16 ignations around well sites, within which subsistence
17 hunting and trapping shall be limited.

18 (20) Reasonable stipulations for protection of
19 cultural and archeological resources.

20 (21) All other protective environmental stipula-
21 tions, restrictions, terms, and conditions deemed
22 necessary by the Secretary.

23 (e) CONSIDERATIONS.—In preparing and promul-
24 gating regulations, lease terms, conditions, restrictions,

1 prohibitions, and stipulations under this section, the Sec-
2 retary shall consider the following:

3 (1) The stipulations and conditions that govern
4 the National Petroleum Reserve-Alaska leasing pro-
5 gram, as set forth in the 1999 Northeast National
6 Petroleum Reserve-Alaska Final Integrated Activity
7 Plan/Environmental Impact Statement.

8 (2) The environmental protection standards
9 that governed the initial Coastal Plain seismic explo-
10 ration program under parts 37.31 to 37.33 of title
11 50, Code of Federal Regulations.

12 (3) The land use stipulations for exploratory
13 drilling on the KIC–ASRC private lands that are set
14 forth in Appendix 2 of the August 9, 1983, agree-
15 ment between Arctic Slope Regional Corporation and
16 the United States.

17 (f) FACILITY CONSOLIDATION PLANNING.—

18 (1) IN GENERAL.—The Secretary shall, after
19 providing for public notice and comment, prepare
20 and update periodically a plan to govern, guide, and
21 direct the siting and construction of facilities for the
22 exploration, development, production, and transpor-
23 tation of Coastal Plain oil and gas resources.

24 (2) OBJECTIVES.—The plan shall have the fol-
25 lowing objectives:

1 (A) Avoiding unnecessary duplication of fa-
2 cilities and activities.

3 (B) Encouraging consolidation of common
4 facilities and activities.

5 (C) Locating or confining facilities and ac-
6 tivities to areas that will minimize impact on
7 fish and wildlife, their habitat, and the environ-
8 ment.

9 (D) Utilizing existing facilities wherever
10 practicable.

11 (E) Enhancing compatibility between wild-
12 life values and development activities.

13 (g) ACCESS TO PUBLIC LANDS.—The Secretary
14 shall—

15 (1) manage public lands in the Coastal Plain
16 subject to section subsections (a) and (b) of section
17 811 of the Alaska National Interest Lands Con-
18 servation Act (16 U.S.C. 3121); and

19 (2) ensure that local residents shall have rea-
20 sonable access to public lands in the Coastal Plain
21 for traditional uses.

22 **SEC. 30408. EXPEDITED JUDICIAL REVIEW.**

23 (a) FILING OF COMPLAINT.—

24 (1) DEADLINE.—Subject to paragraph (2), any
25 complaint seeking judicial review of any provision of

1 this title or any action of the Secretary under this
2 title shall be filed in any appropriate district court
3 of the United States—

4 (A) except as provided in subparagraph
5 (B), within the 90-day period beginning on the
6 date of the action being challenged; or

7 (B) in the case of a complaint based solely
8 on grounds arising after such period, within 90
9 days after the complainant knew or reasonably
10 should have known of the grounds for the com-
11 plaint.

12 (2) VENUE.—Any complaint seeking judicial re-
13 view of an action of the Secretary under this title
14 may be filed only in the United States Court of Ap-
15 peals for the District of Columbia.

16 (3) LIMITATION ON SCOPE OF CERTAIN RE-
17 VIEW.—Judicial review of a Secretarial decision to
18 conduct a lease sale under this title, including the
19 environmental analysis thereof, shall be limited to
20 whether the Secretary has complied with the terms
21 of this title and shall be based upon the administra-
22 tive record of that decision. The Secretary's identi-
23 fication of a preferred course of action to enable
24 leasing to proceed and the Secretary's analysis of
25 environmental effects under this title shall be pre-

1 sumed to be correct unless shown otherwise by clear
2 and convincing evidence to the contrary.

3 (b) LIMITATION ON OTHER REVIEW.—Actions of the
4 Secretary with respect to which review could have been
5 obtained under this section shall not be subject to judicial
6 review in any civil or criminal proceeding for enforcement.

7 **SEC. 30409. FEDERAL AND STATE DISTRIBUTION OF REVE-**
8 **NUES.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law, of the amount of adjusted bonus, rental, and
11 royalty revenues from oil and gas leasing and operations
12 authorized under this title—

13 (1) 50 percent shall be paid to the State of
14 Alaska; and

15 (2) except as provided in section 30412(d) the
16 balance shall be deposited into the Treasury as mis-
17 cellaneous receipts.

18 (b) PAYMENTS TO ALASKA.—Payments to the State
19 of Alaska under this section shall be made semiannually.

20 (c) USE OF BONUS PAYMENTS FOR LOW-INCOME
21 HOME ENERGY ASSISTANCE.—Amounts that are received
22 by the United States as bonuses for leases under this title
23 and deposited into the Treasury under subsection (a)(2)
24 may be appropriated to the Secretary of the Health and
25 Human Services, in addition to amounts otherwise avail-

1 able, to provide assistance under the Low-Income Home
2 Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).

3 **SEC. 30410. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.**

4 (a) EXEMPTION.—Title XI of the Alaska National In-
5 terest Lands Conservation Act of 1980 (16 U.S.C. 3161
6 et seq.) shall not apply to the issuance by the Secretary
7 under section 28 of the Mineral Leasing Act (30 U.S.C.
8 185) of rights-of-way and easements across the Coastal
9 Plain for the transportation of oil and gas.

10 (b) TERMS AND CONDITIONS.—The Secretary shall
11 include in any right-of-way or easement referred to in sub-
12 section (a) such terms and conditions as may be necessary
13 to ensure that transportation of oil and gas does not result
14 in a significant adverse effect on the fish and wildlife, sub-
15 sistence resources, their habitat, and the environment of
16 the Coastal Plain, including requirements that facilities be
17 sited or designed so as to avoid unnecessary duplication
18 of roads and pipelines.

19 (c) REGULATIONS.—The Secretary shall include in
20 regulations under section 30403(g) provisions granting
21 rights-of-way and easements described in subsection (a)
22 of this section.

23 **SEC. 30411. CONVEYANCE.**

24 In order to maximize Federal revenues by removing
25 clouds on title to lands and clarifying land ownership pat-

1 terns within the Coastal Plain, the Secretary, notwith-
2 standing the provisions of section 1302(h)(2) of the Alas-
3 ka National Interest Lands Conservation Act (16 U.S.C.
4 3192(h)(2)), shall convey—

5 (1) to the Kaktovik Inupiat Corporation the
6 surface estate of the lands described in paragraph 1
7 of Public Land Order 6959, to the extent necessary
8 to fulfill the Corporation’s entitlement under section
9 12 of the Alaska Native Claims Settlement Act (43
10 U.S.C. 1611) in accordance with the terms and con-
11 ditions of the Agreement between the Department of
12 the Interior, the United States Fish and Wildlife
13 Service, the Bureau of Land Management, and the
14 Kaktovik Inupiat Corporation effective January 22,
15 1993; and

16 (2) to the Arctic Slope Regional Corporation
17 the remaining subsurface estate to which it is enti-
18 tled pursuant to the August 9, 1983, agreement be-
19 tween the Arctic Slope Regional Corporation and the
20 United States of America.

21 **SEC. 30412. LOCAL GOVERNMENT IMPACT AID AND COMMU-**
22 **NITY SERVICE ASSISTANCE.**

23 (a) FINANCIAL ASSISTANCE AUTHORIZED.—

24 (1) IN GENERAL.—The Secretary may use
25 amounts available from the Coastal Plain Local Gov-

ernment Impact Aid Assistance Fund established by subsection (d) to provide timely financial assistance to entities that are eligible under paragraph (2) and that are directly impacted by the exploration for or production of oil and gas on the Coastal Plain under this title.

(2) ELIGIBLE ENTITIES.—The North Slope Borough, Kaktovik, and other boroughs, municipal subdivisions, villages, and any other community organized under Alaska State law shall be eligible for financial assistance under this section.

(b) USE OF ASSISTANCE.—Financial assistance under this section may be used only for—

(1) planning for mitigation of the potential effects of oil and gas exploration and development on environmental, social, cultural, recreational and subsistence values;

(2) implementing mitigation plans and maintaining mitigation projects;

(3) developing, carrying out, and maintaining projects and programs that provide new or expanded public facilities and services to address needs and problems associated with such effects, including firefighting, police, water, waste treatment, medivac, and medical services; and

1 (4) establishment of a coordination office, by
2 the North Slope Borough, in the City of Kaktovik,
3 which shall—

4 (A) coordinate with and advise developers
5 on local conditions, impact, and history of the
6 areas utilized for development; and

7 (B) provide to the Committee on Resources
8 of the Senate and the Committee on Energy
9 and Resources of the Senate an annual report
10 on the status of coordination between devel-
11 opers and the communities affected by develop-
12 ment.

13 (c) APPLICATION.—

14 (1) IN GENERAL.—Any community that is eligi-
15 ble for assistance under this section may submit an
16 application for such assistance to the Secretary, in
17 such form and under such procedures as the Sec-
18 retary may prescribe by regulation.

19 (2) NORTH SLOPE BOROUGH COMMUNITIES.—A
20 community located in the North Slope Borough may
21 apply for assistance under this section either directly
22 to the Secretary or through the North Slope Bor-
23 ough.

24 (3) APPLICATION ASSISTANCE.—The Secretary
25 shall work closely with and assist the North Slope

1 Borough and other communities eligible for assist-
2 ance under this section in developing and submitting
3 applications for assistance under this section.

4 (d) ESTABLISHMENT OF FUND.—

5 (1) IN GENERAL.—There is established in the
6 Treasury the Coastal Plain Local Government Im-
7 pact Aid Assistance Fund.

8 (2) USE.—Amounts in the fund may be used
9 only for providing financial assistance under this
10 section.

11 (3) DEPOSITS.—Subject to paragraph (4), there
12 shall be deposited into the fund amounts received by
13 the United States as revenues derived from rents,
14 bonuses, and royalties under on leases and lease
15 sales authorized under this title.

16 (4) LIMITATION ON DEPOSITS.—The total
17 amount in the fund may not exceed \$11,000,000.

18 (5) INVESTMENT OF BALANCES.—The Sec-
19 retary of the Treasury shall invest amounts in the
20 fund in interest bearing government securities.

21 (e) AUTHORIZATION OF APPROPRIATIONS.—To pro-
22 vide financial assistance under this section there is author-
23 ized to be appropriated to the Secretary from the Coastal
24 Plain Local Government Impact Aid Assistance Fund
25 \$5,000,000 for each fiscal year.

TITLE V—HYDROPOWER

SEC. 30501. STUDY AND REPORT ON INCREASING ELECTRIC POWER PRODUCTION CAPABILITY OF EXIST- ING FACILITIES.

(a) IN GENERAL.—The Secretary of the Interior, in consultation with the Administrator of each Federal power marketing administration, shall conduct a study of the potential for increasing electric power production capability at existing facilities under the administrative jurisdiction of the Secretary.

(b) CONTENT.—The study under this section shall include identification and description in detail of each facility that is capable, with or without modification, of producing additional hydroelectric power, including estimation of the existing potential for the facility to generate hydroelectric power.

(c) REPORT.—The Secretary shall submit to the Congress a report on the findings, conclusions, and recommendations of the study under this section by not later than 12 months after the date of the enactment of this Act. The Secretary shall include in the report the following:

(1) The identifications, descriptions, and estimations referred to in subsection (b).

1 (2) A description of activities the Secretary is
2 currently conducting or considering, or that could be
3 considered, to produce additional hydroelectric power
4 from each identified facility.

5 (3) A summary of action that has already been
6 taken by the Secretary to produce additional hydro-
7 electric power from each identified facility.

8 (4) The costs to install, upgrade, or modify
9 equipment or take other actions to produce addi-
10 tional hydroelectric power from each identified facil-
11 ity and the level of Federal power customer involve-
12 ment in the Secretary's determination of such costs.

13 (5) The benefits that would be achieved by such
14 installation, upgrade, modification, or other action,
15 including quantified estimates of any additional en-
16 ergy or capacity from each facility identified under
17 subsection (b).

18 (6) A description of actions that are planned,
19 underway, or might reasonably be considered to in-
20 crease hydroelectric power production by replacing
21 turbine runners.

22 (7) A description of actions that are planned,
23 underway, or might reasonably be considered to in-
24 crease hydroelectric power production by performing
25 generator uprates and rewinds.

1 (8) The impact of increased hydroelectric power
2 production on irrigation, fish, wildlife, Indian tribes,
3 river health, water quality, navigation, recreation,
4 fishing, and flood control.

5 (9) Any additional recommendations the Sec-
6 retary considers advisable to increase hydroelectric
7 power production from, and reduce costs and im-
8 prove efficiency at, facilities under the jurisdiction of
9 the Secretary.

10 **SEC. 30502. STUDY AND IMPLEMENTATION OF INCREASED**
11 **OPERATIONAL EFFICIENCIES IN HYDRO-**
12 **ELECTRIC POWER PROJECTS.**

13 (a) IN GENERAL.—The Secretary of Interior shall
14 conduct a study of operational methods and water sched-
15 uling techniques at all hydroelectric power plants under
16 the administrative jurisdiction of the Secretary that have
17 an electric power production capacity greater than 50
18 megawatts, to—

19 (1) determine whether such power plants and
20 associated river systems are operated so as to opti-
21 mize energy and capacity capabilities; and

22 (2) identify measures that can be taken to im-
23 prove operational flexibility at such plants to achieve
24 such optimization.

1 (b) REPORT.—The Secretary shall submit a report on
2 the findings, conclusions, and recommendations of the
3 study under this section by not later than 18 months after
4 the date of the enactment of this Act, including a sum-
5 mary of the determinations and identifications under
6 paragraphs (1) and (2) of subsection (a). The Secretary
7 shall include in the report the impact of optimized hydro-
8 electric power production on irrigation, fish, wildlife, In-
9 dian tribes, river health, water quality, navigation, recre-
10 ation, fishing, and flood control.

11 (c) COOPERATION WITH FEDERAL POWER MAR-
12 KETING ADMINISTRATIONS.—The Secretary shall coordi-
13 nate with the Administrator of each Federal power mar-
14 keting administration in determining how the value of
15 electric power produced by each hydroelectric power facil-
16 ity that produces power marketed by the administration
17 can be optimized.

18 **SEC. 30503. SHIFT OF PROJECT LOADS TO OFF-PEAK PERI-**
19 **ODS.**

20 (a) IN GENERAL.—The Secretary of the Interior
21 shall—

22 (1) review electric power consumption by Bu-
23 reau of Reclamation facilities for water pumping
24 purposes; and

1 (2) make such adjustments in such pumping as
 2 possible to minimize the amount of electric power
 3 consumed for such pumping during periods of peak
 4 electric power consumption, including by performing
 5 as much of such pumping as possible during off-
 6 peak hours at night.

7 (b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS
 8 REQUIRED.—The Secretary may not under this section
 9 make any adjustment in pumping at a facility without the
 10 consent of each person that has contracted with the
 11 United States for delivery of water from the facility for
 12 use for irrigation and that would be affected by such ad-
 13 justment.

14 (c) EXISTING OBLIGATIONS NOT AFFECTED.—This
 15 section shall not be construed to affect any existing obliga-
 16 tion of the Secretary to provide electric power, water, or
 17 other benefits from Bureau of Reclamation facilities.

18 **TITLE VI—GEOTHERMAL** 19 **ENERGY**

20 **SEC. 30601. COMPETITIVE LEASE SALE REQUIREMENTS.**

21 (a) IN GENERAL.—Section 4 of the Geothermal
 22 Steam Act of 1970 (30 U.S.C. 1003) is amended to read
 23 as follows:

24 “LEASING PROCEDURES

25 “SEC. 4. (a) IN GENERAL.—

1 “(1) NOMINATIONS.—The Secretary shall ac-
2 cept nominations at any time from qualified compa-
3 nies and individuals of areas to be leased under this
4 Act.

5 “(2) COMPETITIVE LEASE SALE REQUIRED.—
6 The Secretary shall hold a competitive lease sale at
7 least once every 2 years for lands in a State in that
8 are located areas with respect to which there are
9 nominations pending under paragraph (1).

10 “(3) NONCOMPETITIVE LEASING.—The Sec-
11 retary shall make available for a period of 2 years
12 for noncompetitive leasing any lands for which a
13 competitive lease sale is held, but for which the Sec-
14 retary does not receive any bids in a competitive
15 lease sale.”.

16 (b) PENDING LEASE APPLICATIONS.—Not later than
17 6 months after the date of the enactment of this Act, the
18 Secretary of the Interior shall initiate competitive lease
19 sales under the Geothermal Steam Act of 1970 (30 U.S.C.
20 1001 et seq.), as amended by this Act, for areas with re-
21 spect to which applications for leasing are pending on the
22 date of the enactment of this Act.

1 **SEC. 30602. SPECIAL PROVISIONS REGARDING DIRECT USE**
2 **OF LOW TEMPERATURE GEOTHERMAL EN-**
3 **ERGY RESOURCES.**

4 (a) LEASING PROCEDURE.—Section 4 of the Geo-
5 thermal Steam Act of 1970 (30 U.S.C. 1003) is further
6 amended by adding at the end the following:

7 “(b) LEASING OF LOW TEMPERATURE GEOTHERMAL
8 RESOURCES.—Lands leased under this Act exclusively for
9 qualified development and direct utilization of low tem-
10 perature geothermal resources shall be leased to any quali-
11 fied applicant who first applies for such lease under regu-
12 lations formulated by the Secretary.”.

13 (b) LIMITATION ON LEASE AREA.—Section 7 of the
14 Geothermal Steam Act of 1970 (30 U.S.C. 1006) is
15 amended—

16 (1) in the first sentence by striking “A geo-
17 thermal lease” and inserting “(a) IN GENERAL.—
18 Except as provided in subsection (b), a geothermal
19 lease”; and

20 (2) by adding at the end the following:

21 “(b) LEASING OF LOW TEMPERATURE GEOTHERMAL
22 RESOURCES.—A geothermal lease for qualified develop-
23 ment and direct utilization of low temperature geothermal
24 resources shall embrace not more than the minimum
25 amount of acreage determined by the Secretary to be rea-
26 sonably necessary for such utilization.”.

1 (c) ANNUAL PAYMENT.—Section 5 of the Geothermal
2 Steam Act of 1970 (30 U.S.C. 1004) is amended—

3 (1) in paragraph (c) by redesignating subpara-
4 graphs (1) and (2) as subparagraphs (A) and (B);

5 (2) by redesignating paragraphs (a) through (d)
6 in order as paragraphs (1) through (4);

7 (3) by inserting “(a) IN GENERAL.—” after
8 “SEC. 5.”; and

9 (4) by adding at the end the following:

10 “(b) EXEMPTION FOR USE OF LOW TEMPERATURE
11 RESOURCES.—

12 “(1) IN GENERAL.—In lieu of any royalty or
13 rental under subsection (a), a lease for qualified de-
14 velopment and direct utilization of low temperature
15 geothermal resources shall provide for payment by
16 the lessee of an annual fee per well of not less than
17 \$100, and not more than \$1,000, in accordance with
18 the schedule issued under paragraph (2).

19 “(2) SCHEDULE.—The Secretary shall issue a
20 schedule of fees under this section under which a fee
21 is based on the scale of development and utilization
22 to which the fee applies.”.

23 (d) DEFINITIONS.—Section 2 of the Geothermal
24 Steam Act of 1970 (30 U.S.C. 1001) is amended—

1 (1) in paragraph (f) by redesignating subpara-
2 graphs (1) through (4) in order as subparagraphs
3 (A) through (D);

4 (2) by redesignating paragraphs (a) through (f)
5 in order as paragraphs (1) through (6); and

6 (3) by adding at the end the following:

7 “(7) LOW TEMPERATURE GEOTHERMAL RE-
8 SOURCES.—The term ‘low temperature geothermal
9 resources’ means geothermal steam and associated
10 geothermal resources having a wellhead temperature
11 of less than 195 degrees Fahrenheit.

12 “(8) QUALIFIED DEVELOPMENT AND DIRECT
13 UTILIZATION.—The term ‘qualified development and
14 direct utilization’ means development and utilization
15 in which all products of geothermal resources, other
16 than any heat utilized, are returned to the geo-
17 thermal formation from which they are produced.”.

18 (e) EXISTING LEASES.—

19 (1) APPLICATION TO CONVERT.—Any lessee
20 under a lease under the Geothermal Steam Act of
21 1970 that was issued before the date of the enact-
22 ment of this Act may apply to the Secretary of the
23 Interior, by not later than 18 months after the date
24 of the enactment of this Act, to convert such lease
25 to a lease for qualified development and direct utili-

1 zation of low temperature geothermal resources in
2 accordance with the amendments made by this sec-
3 tion.

4 (2) CONVERSION.—The Secretary shall approve
5 such an application and convert such a lease to a
6 lease in accordance with the amendments by not
7 later than 180 days after receipt of such application,
8 unless the Secretary determines that the applicant is
9 not a qualified applicant with respect to the lease.

10 **SEC. 30603. ROYALTIES AND NEAR-TERM PRODUCTION IN-**
11 **CENTIVES.**

12 (a) ROYALTY.—Section 5 of the Geothermal Steam
13 Act of 1970 (30 U.S.C. 1004) is further amended in sub-
14 section (a) by striking paragraph (1) and inserting the fol-
15 lowing:

16 “(1) a royalty on direct use of geothermal
17 steam and associated geothermal resources, other
18 than low temperature geothermal resources, which
19 shall be—

20 “(A) 3.5 percent of the gross proceeds
21 from the sale of electricity produced by such re-
22 sources; and

23 “(B) 0.75 percent of the gross proceeds
24 from the sale of items produced by the direct
25 use of such resources;”.

1 (b) NEAR-TERM PRODUCTION INCENTIVE.—

2 (1) IN GENERAL.—Notwithstanding section
3 5(a) of the Geothermal Steam Act of 1970, as
4 amended by subsection (a), or any provision of any
5 lease under that Act, the royalty required to be
6 paid—

7 (A) under any qualified geothermal energy
8 lease with respect to commercial production of
9 heat or energy from a facility that begins such
10 production in the 6-year period beginning on
11 the date of the enactment of this Act; or

12 (B) on qualified expansion geothermal en-
13 ergy;

14 shall be 50 percent of the amount of royalty other-
15 wise required to be paid under those provisions.

16 (2) STATE SHARE.—Notwithstanding section 20
17 of the Geothermal Steam Act of 1970 (30 U.S.C.
18 1019), section 35 of the Mineral Leasing Act (30
19 U.S.C.191), or section 6 of the Mineral Leasing Act
20 for Acquired Lands (30 U.S.C. 355), in the case of
21 monies received by the United States from royalty
22 described in subparagraph (A) or (B) of paragraph
23 (1), the percentage required to be paid by the Sec-
24 retary of the Treasury to a State under those sec-
25 tions shall be 100 percent.

1 (3) 4-YEAR APPLICATION.—Paragraphs (1) and
2 (2) apply only to commercial production of heat or
3 energy from a facility in the first 4 years of such
4 production.

5 (4) NO EFFECT ON STATE PORTION.—This sub-
6 section shall not be construed to reduce the amount
7 of royalty required to be paid to a State.

8 (c) DEFINITIONS.—In this section:

9 (1) QUALIFIED EXPANSION GEOTHERMAL EN-
10 ERGY.—The term “qualified expansion geothermal
11 energy” means geothermal energy produced from a
12 generation facility for which—

13 (A) the production is increased by more
14 than 10 percent as a result of expansion of the
15 facility carried out in the 6-year period begin-
16 ning on the date of the enactment of this Act;
17 and

18 (B) such production increase is greater
19 than 10 percent of the average production by
20 the facility during the 5-year period preceding
21 the expansion of the facility.

22 (2) QUALIFIED GEOTHERMAL ENERGY
23 LEASE.—The term “qualified geothermal energy
24 lease” means a lease under the Geothermal Steam
25 Act of 1970 (30 U.S.C. 1001 et seq.)—

1 (A) that was executed before the end of
2 the 6-year period beginning on the date of the
3 enactment of this Act; and

4 (B) under which no commercial production
5 of any form of heat or energy occurred before
6 the date of the enactment of this Act.

7 (d) ROYALTY EXISTING LEASES.—

8 (1) IN GENERAL.—Any lessee under a lease
9 issued under the Geothermal Steam Act of 1970 be-
10 fore the date of the enactment of this Act may mod-
11 ify the terms of the lease relating to payment of roy-
12 alties to comply with the amendment made by sub-
13 section (a), by applying to the Secretary of the Inte-
14 rior by not later than 18 months after the date of
15 the enactment of this Act.

16 (2) APPLICATION OF MODIFICATION.—Such
17 modification shall apply to any use of geothermal
18 steam and associated geothermal resources to which
19 the amendment applies that occurs after the date of
20 that application.

21 **SEC. 30604. CONSULTATION REGARDING GEOTHERMAL**
22 **LEASING AND PERMITTING ON PUBLIC**
23 **LANDS.**

24 (a) IN GENERAL.—Not later than 6 months after the
25 date of the enactment of this Act, the Secretary of the

1 Interior and the Secretary of Agriculture shall enter into
2 and submit to the Congress a memorandum of under-
3 standing in accordance with this section regarding leasing
4 and permitting, for geothermal development, of public
5 lands under their respective administrative jurisdictions.

6 (b) LEASE AND PERMIT APPLICATIONS.—The memo-
7 randum of understanding shall include provisions that—

8 (1) identify known geothermal areas on public
9 lands within the National Forest System and when
10 necessary review management plans to consider leas-
11 ing under the Geothermal Steam Act of 1970 (30
12 U.S.C. 1001 et seq.) as a land use;

13 (2) establish an administrative procedure for
14 processing geothermal lease applications, including
15 lines of authority, steps in application processing,
16 and timeframes for application processing;

17 (3) provide that the Secretary concerned
18 shall—

19 (A) within 14 days after receiving an ap-
20 plication for a lease, determine whether the ap-
21 plication contains sufficient information to
22 allow processing of the application; and

23 (B) if the application is found not to con-
24 tain sufficient information to allow processing
25 the application the Secretary shall, before the

1 end of such 14-day period, provide written noti-
2 fication to the lease applicant that the applica-
3 tion is being returned to the applicant without
4 processing and itemizing the deficiencies in the
5 application that prevent processing;

6 (4) provide that the Secretary concerned shall
7 within 30 days after receiving a lease application,
8 provide written notice to the lease applicant regard-
9 ing the status of the application, including an esti-
10 mation of the time that will be required to complete
11 action on the application; and

12 (5) establish an administrative procedure for
13 processing geothermal development permits, includ-
14 ing lines of authority, steps in permit processing,
15 and timeframes for permit processing.

16 (c) FIVE-YEAR LEASING PLAN.—The memorandum
17 of understanding shall develop a 5-year plan for leasing
18 under the Geothermal Steam Act of 1970 (30 U.S.C. 1001
19 et seq.) of public land in the National Forest System. The
20 plan for geothermal leasing shall be updated every 5 years.

21 (d) DATA RETRIEVAL SYSTEM.—The memorandum
22 of understanding shall establish a joint data retrieval sys-
23 tem that is capable of tracking lease and permit applica-
24 tions and requests and providing to the applicant or re-
25 quester information as to their status within the Depart-

4 The Secretary of the Interior shall promptly review
5 and report to the Congress within 3 years after the date
6 of the enactment of this Act regarding the status of all
7 moratoria on and withdrawals from leasing under the Geo-
8 thermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) of
9 known geothermal resources areas (as that term is defined
10 in section 2 of that Act (30 U.S.C. 1001), specifying for
11 each such area whether the basis for such moratoria or
12 withdrawal still applies.

(a) IN GENERAL.—The Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) is amended by adding at the end the following:

19 DOCUMENTATION, AND STUDIES

20 “SEC. 30. (a) IN GENERAL.—The Secretary of the
21 Interior may, through royalty credits, reimburse a person
22 who is a lessee, operator, operating rights owner, or appli-
23 cant for a lease under this Act for reasonable amounts
24 paid by the person for preparation by the Secretary (or
25 a contractor or other person selected by the Secretary) of
26 any project-level analysis, documentation, or related study

1 required under the National Environmental Policy Act of
2 1969 (42 U.S.C. 4321 et seq.) with respect to the lease.

3 “(b) CONDITIONS.—The Secretary may provide reim-
4 bursement under subsection (a) only if—

5 “(1) adequate funding to enable the Secretary
6 to timely prepare the analysis, documentation, or re-
7 lated study is not appropriated;

8 “(2) the person paid the amounts voluntarily;
9 and

10 “(3) the person maintains records of its costs
11 in accordance with regulations prescribed by the
12 Secretary.”.

13 (b) APPLICATION.—The amendments made by this
14 section shall apply with respect to any lease entered into
15 before, on, or after the date of the enactment of this Act.

16 (c) DEADLINE FOR REGULATIONS.—The Secretary
17 shall issue regulations implementing the amendments
18 made by this section by not later than 90 days after the
19 date of the enactment of this Act.

20 **SEC. 30607. ASSESSMENT OF GEOTHERMAL ENERGY PO-**
21 **TENTIAL.**

22 The Secretary of Interior, acting through the Direc-
23 tor of the United States Geological Survey, shall update
24 the 1978 Assessment of Geothermal Resources, and sub-
25 mit that updated assessment to the Committee on Re-

1 sources of the House of Representatives and the Com-
2 mittee on Energy and Natural Resources of the Senate—

3 (1) within 3 years after the date of enactment
4 of this Act; and

5 (2) thereafter as the availability of data and de-
6 velopments in technology warrant.

7 **SEC. 30608. COOPERATIVE OR UNIT PLANS.**

8 (a) IN GENERAL.—Section 18 of the Geothermal
9 Steam Act of 1970 (30 U.S.C. 1017) is amended to read
10 as follows:

11 “COOPERATIVE OR UNIT PLANS

12 “SEC. 18. (a) ADOPTION OF PLAN BY LESSEES.—

13 “(1) IN GENERAL.—For the purpose of more
14 properly conserving the natural resources of any
15 geothermal field, or like area, or any part thereof
16 (whether or not any part of the geothermal field, or
17 like area, is then subject to any cooperative or unit
18 plan of development or operation), lessees thereof
19 and their representatives may unite with each other,
20 or jointly or separately with others, in collectively
21 adopting and operating under a cooperative or unit
22 plan of development or operation of such field, or
23 like area, or any part thereof, if determined and cer-
24 tified by the Secretary to be necessary or advisable
25 in the public interest.

1 “(2) MODIFICATION OF LEASE REQUIREMENTS
2 BY SECRETARY.—The Secretary may, in the discre-
3 tion of the Secretary, and with the consent of the
4 holders of leases involved, establish, alter, change, or
5 revoke drilling, producing, rental, minimum royalty,
6 and royalty requirements of such leases and to make
7 such regulations with reference to such leases, with
8 the consent of the lessees, in connection with the in-
9 stitution and operation of any such cooperative or
10 unit plan as the Secretary may deem necessary or
11 proper to secure the proper protection of the public
12 interest.

13 “(b) REQUIREMENT OF PLANS UNDER NEW
14 LEASES.—The Secretary—

15 “(1) may provide that geothermal leases issued
16 under this Act after the date of the enactment of
17 this section shall contain a provision requiring the
18 lessee to operate under such a reasonable coopera-
19 tive or unit plan; and

20 “(2) may prescribe such a plan under which
21 such lessee shall operate, which shall adequately pro-
22 tect the rights of all parties in interest, including the
23 United States.

24 “(c) MODIFICATION OF RATE OF PROSPECTING, DE-
25 VELOPMENT, AND PRODUCTION.—The Secretary may re-

1 quire that any plan authorized by the this section that
2 applies to lands owned by the United States contain a pro-
3 vision under which authority is vested in the Secretary,
4 or any person, committee, or State or Federal officer or
5 agency as may be designated in the plan, to alter or mod-
6 ify from time to time the rate of prospecting and develop-
7 ment and the quantity and rate of production under such
8 plan.

9 “(d) EXCLUSION FROM DETERMINATION OF HOLD-
10 ING OR CONTROL.—Any lands that are subject to any plan
11 approved or prescribed by the Secretary under this section
12 shall not be considered in determining holdings or control
13 under any provision of this Act.

14 “(e) POOLING OF CERTAIN LANDS.—If separate
15 tracts of lands cannot be independently developed and op-
16 erated to use geothermal steam and associated geothermal
17 resources pursuant to this Act in conformity with an es-
18 tablished development program—

19 “(1) any such lands, or a portion thereof, may
20 be pooled with other lands, whether or not owned by
21 the United States, for purposes of such development
22 and operation under a communitization agreement
23 providing for an apportionment of production or roy-
24 alties among the separate tracts of land comprising

1 the production unit, if such pooling is determined by
2 the Secretary to be in the public interest; and

3 “(2) operation or production pursuant to such
4 an agreement shall be treated as operation or pro-
5 duction with respect to each tract of land that is
6 subject to the agreement.

7 “(f) PLAN REVIEW.—No more than 5 years after ap-
8 proval of any cooperative or unit plan of development or
9 operation, and at least every 5 years thereafter, the Sec-
10 retary shall review each such plan and, after notice and
11 opportunity for comment, eliminate from inclusion in such
12 plan any lands that the Secretary determines are not rea-
13 sonably necessary for cooperative or unit operations under
14 the plan. Such elimination shall be based on scientific evi-
15 dence, and shall occur only if it is determined by the Sec-
16 retary to be for the purpose of conserving and properly
17 managing the geothermal resource. Any land so eliminated
18 shall be eligible for an extension under subsection (c) or
19 (g) of section 6 if it meets the requirements for such an
20 extension.

21 “(g) APPROVAL BY SECRETARY.—The Secretary
22 may, on such conditions as the Secretary may prescribe,
23 approve operating, drilling, or development contracts made
24 by one or more lessees of geothermal leases, with one or
25 more persons, associations, or corporations if, in the dis-

1 cretion of the Secretary, the conservation of natural re-
2 sources or the public convenience or necessity may require
3 or the interests of the United States may be best served
4 thereby. All leases operated under such approved oper-
5 ating, drilling, or development contracts, and interests
6 thereunder, shall be excepted in determining holdings or
7 control under section 7 of this Act.”.

8 **SEC. 30609. ROYALTY ON BYPRODUCTS.**

9 Section 5 of the Geothermal Steam Act of 1970 (30
10 U.S.C. 1004) is further amended in subsection (a) by
11 striking paragraph (2) and inserting the following:

12 “(2) a royalty on any byproduct that is a min-
13 eral named in the first section of the Mineral Leas-
14 ing Act (30 U.S.C. 181), and that is derived from
15 production under the lease, at the rate of the royalty
16 that applies under that Act to production of such
17 mineral under a lease under that Act;”.

18 **SEC. 30610. REPEAL OF AUTHORITIES OF SECRETARY TO**
19 **READJUST TERMS, CONDITIONS, RENTALS,**
20 **AND ROYALTIES.**

21 Section 8 of the Geothermal Steam Act of 1970 (30
22 U.S.C. 1007) is amended by repealing subsections (a) and
23 (b), and by striking “(c)”.

1 **SEC. 30611. CREDITING OF RENTAL TOWARD ROYALTY.**

2 Section 5 of the Geothermal Steam Act of 1970 (30
3 U.S.C. 1004) is further amended—

4 (1) in subsection (a)(2) by inserting “and”
5 after the semicolon at the end;

6 (2) in subsection (a)(3) by striking “; and” and
7 inserting a period;

8 (3) by striking paragraph (4) of subsection (a);
9 and

10 (4) by adding at the end the following:

11 “(c) CREDITING OF RENTAL TOWARD ROYALTY.—

12 Any annual rental under this section that is paid with re-
13 spect to a lease before the first day of the year for which
14 the annual rental is owed shall be credited to the amount
15 of royalty that is required to be paid under the lease for
16 that year.”.

17 **SEC. 30612. LEASE DURATION AND WORK COMMITMENT RE-**
18 **QUIREMENTS.**

19 (a) IN GENERAL.—Section 6 of the Geothermal
20 Steam Act of 1970 (30 U.S.C. 1005) is amended—

21 (1) by striking so much as precedes subsection
22 (c), and striking subsections (e), (g), (h), (i), and
23 (j);

24 (2) by redesignating subsections (c), (d), and
25 (f) in order as subsections (g), (h), and (i);

1 (3) by inserting before subsection (g), as so re-
2 designated, the following:

3 “LEASE TERM AND WORK COMMITMENT REQUIREMENTS

4 “SEC. 6. (a) PRIMARY TERM.—

5 “(1) IN GENERAL.—A geothermal lease shall be
6 for a primary term of ten years.

7 “(2) INITIAL EXTENSION.—The Secretary shall
8 extend the primary term of a geothermal lease for
9 5 years if, for each year after the fifth year of the
10 lease—

11 “(A) the Secretary determined under sub-
12 section (c) that the lessee satisfied the work
13 commitment requirements that applied to the
14 lease for that year; or

15 “(B) the lessee paid in accordance with
16 subsection (d) the value of any work that was
17 not completed in accordance with those require-
18 ments.

19 “(3) ADDITIONAL EXTENSION.—The Secretary
20 shall extend the primary term of a geothermal lease
21 (after an extension under paragraph (2)) for an ad-
22 ditional 5 years if, for each year after the fifteenth
23 year of the lease, the Secretary determined under
24 subsection (c) that the lessee satisfied the work com-
25 mitment requirements that applied to the lease for
26 that year.

1 “(b) REQUIREMENT TO SATISFY ANNUAL WORK
2 COMMITMENT REQUIREMENT.—

3 “(1) IN GENERAL.—The lessee for a geothermal
4 lease shall, for each year after the fifth year of the
5 lease, satisfy work commitment requirements pre-
6 scribed by the Secretary that apply to the lease for
7 that year.

8 “(2) PRESCRIPTION OF WORK COMMITMENT RE-
9 QUIREMENTS.—The Secretary shall issue regulations
10 prescribing minimum work commitment require-
11 ments for geothermal leases, that—

12 “(A) require that a lessee, in each year
13 after the fifth year of the primary term of a
14 geothermal lease, diligently work to achieve
15 commercial production or utilization of steam
16 under the lease;

17 “(B) require that in each year to which
18 work commitment requirements under the regu-
19 lations apply, the lessee shall significantly re-
20 duce the amount of work that remains to be
21 done to achieve such production or utilization;

22 “(C) describe specific work that must be
23 completed by a lessee by the end of each year
24 to which the work commitment requirements
25 apply;

1 “(D) carry forward and apply to work
2 commitment requirements for a year, work
3 completed in any year in the preceding 3-year
4 period that was in excess of the work required
5 to be performed in that preceding year; and

6 “(E) establish transition rules for leases
7 issued before the date of the enactment of this
8 subsection.

9 “(3) TERMINATION OF APPLICATION OF RE-
10 QUIREMENTS.—Work commitment requirements pre-
11 scribed under this subsection shall not apply to a
12 geothermal lease after the date on which geothermal
13 steam is produced or utilized under the lease in com-
14 mercial quantities.

15 “(c) DETERMINATION OF WHETHER REQUIREMENTS
16 SATISFIED.—The Secretary shall, by not later than 21
17 days after the end of each year for which work commit-
18 ment requirements under subsection (b) apply to a geo-
19 thermal lease—

20 “(1) determine whether the lessee has satisfied
21 the requirements that apply for that year;

22 “(2) notify the lessee of that determination; and

23 “(3) in the case of a notification that the lessee
24 did not satisfy work commitment requirements for
25 the year, include in the notification—

1 “(A) a description of the specific work that
2 was not completed by the lessee in accordance
3 with the requirements; and

4 “(B) the amount of the dollar value of
5 such work that was not completed, reduced by
6 the amount of expenditures made for work com-
7 pleted in a prior year that is carried forward
8 pursuant to subsection (b)(2)(D).

9 “(d) PAYMENT OF VALUE OF UNCOMPLETED
10 WORK.—

11 “(1) IN GENERAL.—If the Secretary notifies a
12 lessee that the lessee failed to satisfy work commit-
13 ment requirements under subsection (b), the lessee
14 shall pay to the Secretary, by not later than the end
15 of the 60-day period beginning on the date of the
16 notification, the dollar value of work that was not
17 completed by the lessee, in the amount stated in the
18 notification (as reduced under subsection (c)(3)(B)).

19 “(2) FAILURE TO PAY VALUE OF
20 UNCOMPLETED WORK.—If a lessee fails to pay such
21 amount to the Secretary before the end of that pe-
22 riod, the lease shall terminate upon the expiration of
23 the period.

24 “(e) CONTINUATION AFTER COMMERCIAL PRODUC-
25 TION OR UTILIZATION.—If geothermal steam is produced

1 or utilized in commercial quantities within the primary
2 term of the lease under subsection (a) (including any ex-
3 tension of the lease under subsection (a)), such lease shall
4 continue until the date on which geothermal steam is no
5 longer produced or utilized in commercial quantities.

6 “(f) CONVERSION OF GEOTHERMAL LEASE TO MIN-
7 ERAL LEASE.—The lessee under a lease that has produced
8 geothermal steam for electrical generation, has been deter-
9 mined by the Secretary to be incapable of any further com-
10 mercial production or utilization of geothermal steam, and
11 that is producing any valuable byproduct in payable quan-
12 tities may, within 6 months after such determination—

13 “(1) convert the lease to a mineral lease under
14 the Mineral Leasing Act (30 U.S.C. 181 et seq.) or
15 under the Mineral Leasing Act for Acquired Lands
16 (30 U.S.C. 351 et seq.), if the lands that are subject
17 to the lease can be leased under that Act for the
18 production of such byproduct; or

19 “(2) convert the lease to a mining claim under
20 the general mining laws, if the byproduct is a
21 locatable mineral.”.

22 (b) CONFORMING AMENDMENT.—

23 (1) Section 18 of the Geothermal Steam Act of
24 1970 (30 U.S.C. 1017) is amended by striking “sub-
25 section (c) or (g)” and inserting “subsection (g)”.

1 (2) Section 20 of the Geothermal Steam Act of
2 1970 (30 U.S.C. 1019) is amended by striking “, in-
3 cluding the payments referred to in section 6(i),”.

4 **SEC. 30613. ADVANCED ROYALTIES REQUIRED FOR SUS-**
5 **PENSION OF PRODUCTION.**

6 Section 5 of the Geothermal Steam Act of 1970 (30
7 U.S.C. 1004) is further amended by adding at the end
8 the following:

9 “(d) ADVANCED ROYALTIES REQUIRED FOR SUS-
10 PENSION OF PRODUCTION.—(1) If production of heat or
11 energy under a geothermal lease is suspended after the
12 date of any such production for which royalty is required
13 under section 5(a), the Secretary shall require the lessee,
14 until the end of such suspension, to pay royalty in advance
15 at the monthly pro-rata rate of the average annual rate
16 at which such royalty was paid each year in the 5-year-
17 period preceding the date of suspension.

18 “(2) Paragraph (1) shall not apply if the suspension
19 is required or otherwise caused by the Secretary, the Sec-
20 retary of a military department, or a State or local govern-
21 ment.”.

22 **SEC. 30614. ANNUAL RENTAL.**

23 (a) ANNUAL RENTAL RATE.—Section 5 of the Geo-
24 thermal Steam Act of 1970 (30 U.S.C. 1004) is further
25 amended in subsection (a) in paragraph (3) by striking

1 “\$1 per acre or fraction thereof for each year of the lease”
2 and all that follows through the end of the paragraph and
3 inserting “\$1 per acre or fraction thereof for each year
4 of the lease in the case of a lease awarded in a noncompeti-
5 tive lease sale; or \$2 per acre or fraction thereof for the
6 first year, \$3 per acre or fraction thereof for each of the
7 second through tenth years, and \$5 per acre or fraction
8 thereof for each year after the 10th year thereof, in the
9 case of a lease awarded in a competitive lease sale; and”.

10 (b) TERMINATION OF LEASE FOR FAILURE TO PAY
11 RENTAL.—Section 5 of the Geothermal Steam Act of
12 1970 (30 U.S.C. 1004) is further amended by adding at
13 the end the following:

14 “(e) TERMINATION OF LEASE FOR FAILURE TO PAY
15 RENTAL.—

16 “(1) IN GENERAL.—The Secretary shall termi-
17 nate any lease with respect to which rental is not
18 paid in accordance with this Act and the terms of
19 the lease under which the rental is required, upon
20 the expiration of the 45-day period beginning on the
21 date of the failure to pay such rental.

22 “(2) NOTIFICATION.—The Secretary shall
23 promptly notify a lessee that has not paid rental re-
24 quired under the lease that the lease will be termi-

1 nated at the end of the period referred to in para-
 2 graph (1).

3 “(3) REINSTATEMENT.—A lease that would
 4 otherwise terminate under paragraph (1) shall not
 5 terminate under that paragraph if the lessee pays to
 6 the Secretary, before the end of the period referred
 7 to in paragraph (1), the amount of rental due plus
 8 a late fee equal to 10 percent of such amount.”.

9 **TITLE VII—COAL**

10 **SEC. 30701. SHORT TITLE.**

11 This title may be cited as the “Coal Leasing Amend-
 12 ments Act of 2003”.

13 **SEC. 30702. REPEAL OF THE 160-ACRE LIMITATION FOR** 14 **COAL LEASES.**

15 Section 3 of the Mineral Leasing Act (30 U.S.C. 203)
 16 is amended in the first sentence by striking “such lease,”
 17 and all that follows through the end of the sentence and
 18 inserting “such lease.”.

19 **SEC. 30703. MINING PLANS.**

20 Section 2(d)(2) of the Mineral Leasing Act (30
 21 U.S.C. 202a(2)) is amended—

- 22 (1) by inserting “(A)” after “(2)”; and
- 23 (2) by adding at the end the following:

1 “(B) The Secretary may establish a period of more
2 than 40 years if the Secretary determines that the longer
3 period—

4 “(i) will ensure the maximum economic recovery
5 of a coal deposit; or

6 “(ii) the longer period is in the interest of the
7 orderly, efficient, or economic development of a coal
8 resource.”.

9 **SEC. 30704. PAYMENT OF ADVANCE ROYALTIES UNDER**
10 **COAL LEASES.**

11 (a) IN GENERAL.—Section 7(b) of the Mineral Leas-
12 ing Act of 1920 (30 U.S.C. 207(b)) is amended to read
13 as follows:

14 “(b)(1) Each lease shall be subjected to the condition
15 of diligent development and continued operation of the
16 mine or mines, except where operations under the lease
17 are interrupted by strikes, the elements, or casualties not
18 attributable to the lessee.

19 “(2)(A) The Secretary of the Interior, upon deter-
20 mining that the public interest will be served thereby, may
21 suspend the condition of continued operation upon the
22 payment of advance royalties.

23 “(B) Such advance royalties shall be computed based
24 on the average price for coal sold in the spot market from

1 the same region during the last month of each applicable
2 continued operation year.

3 “(C) The aggregate number of years during the ini-
4 tial and any extended term of any lease for which advance
5 royalties may be accepted in lieu of the condition of contin-
6 ued operation shall not exceed 20.

7 “(3) The amount of any production royalty paid for
8 any year shall be reduced (but not below zero) by the
9 amount of any advance royalties paid under such lease to
10 the extent that such advance royalties have not been used
11 to reduce production royalties for a prior year.

12 “(4) This subsection shall be applicable to any lease
13 or logical mining unit in existence on the date of the enact-
14 ment of this paragraph or issued or approved after such
15 date.

16 “(5) Nothing in this subsection shall be construed to
17 affect the requirement contained in the second sentence
18 of subsection (a) relating to commencement of production
19 at the end of 10 years.”.

20 (b) AUTHORITY TO WAIVE, SUSPEND, OR REDUCE
21 ADVANCE ROYALTIES.—Section 39 of the Mineral Leas-
22 ing Act (30 U.S.C. 209) is amended by striking the last
23 sentence.

1 **SEC. 30705. ELIMINATION OF DEADLINE FOR SUBMISSION**
2 **OF COAL LEASE OPERATION AND RECLAMA-**
3 **TION PLAN.**

4 Section 7(c) of the Mineral Leasing Act (30 U.S.C.
5 207(c)) is amended by striking “and not later than three
6 years after a lease is issued,”.

7 **SEC. 30706. AMENDMENTS RELATING TO FINANCIAL ASSUR-**
8 **ANCES WITH RESPECT TO BONUS BIDS.**

9 (a) PROHIBITION ON REQUIRING SURETY BONDS.—
10 Section 2(a) of the Mineral Leasing Act (30 U.S.C.
11 201(a)) is amended by adding at the end the following:

12 “(4) The Secretary shall not require a surety bond
13 or any other financial assurance to guarantee payment of
14 deferred bonus bid installments with respect to any coal
15 lease issued based upon a cash bonus bid.

16 “(5) Notwithstanding any other provision of law, if
17 the lessee under a coal lease fails to pay any installment
18 of a deferred cash bonus bid within 10 days after the Sec-
19 retary provides written notice that payment of such in-
20 stallment is past due—

21 “(A) such lease shall automatically terminate;

22 “(B) any deferred bonus payments that have
23 not been paid to the United States with respect to
24 such lease shall no longer be owed to the United
25 States; and

1 “(C) any bonus payments already made to the
2 United States with respect to such lease shall not be
3 returned to the lessee or credited in any future lease
4 sale.”.

5 (b) CONFORMING AMENDMENT.—Section 2(a)(1) of
6 the Mineral Leasing Act (30 U.S.C. 201(a)(1)) is amend-
7 ed by striking “Upon default or cancellation of any coal
8 lease for which bonus payments are due, any unpaid re-
9 mainder of the bid shall be immediately payable to the
10 United States.”.

11 **SEC. 30707. INVENTORY REQUIREMENT.**

12 (a) REVIEW OF ASSESSMENTS.—

13 (1) IN GENERAL.—The Secretary of the Inte-
14 rior, in consultation with the Secretary of Agri-
15 culture and the Secretary of Energy, shall review
16 coal assessments and other available data to iden-
17 tify—

18 (A) public lands with coal resources;

19 (B) the extent and nature of any restric-
20 tions or impediments to the development of coal
21 resources on public lands identified under para-
22 graph (1); and

23 (C) with respect to areas of such lands for
24 which sufficient data exists, resources of com-
25 pliant coal and supercompliant coal.

1 (2) DEFINITIONS.—For purposes of this sub-
2 section—

3 (A) the term “compliant coal” means coal
4 that contains not less than 1.0 and not more
5 than 1.2 pounds of sulfur dioxide per million
6 Btu; and

7 (B) the term “supercompliant coal” means
8 coal that contains less than 1.0 pounds of sul-
9 fur dioxide per million Btu.

10 (b) COMPLETION AND UPDATING OF THE INVEN-
11 TORY.—The Secretary—

12 (1) shall complete the inventory under sub-
13 section (a) by not later than 2 years after the date
14 of the enactment of this Act; and

15 (2) shall update the inventory as the availability
16 of data and developments in technology warrant.

17 (c) REPORT.—The Secretary shall submit to the
18 Committee on Resources of the House of Representatives
19 and to the Committee on Energy and Natural Resources
20 of the Senate and make publicly available—

21 (1) a report containing the inventory under this
22 section, by not later than 2 years after the effective
23 date of this section; and

24 (2) each update of such inventory.

1 **SEC. 30708. APPLICATION OF AMENDMENTS.**

2 The amendments made by this title apply with re-
3 spect to any coal lease issued before, on, or after the date
4 of the enactment of this Act.

5 **TITLE VIII—INSULAR AREAS**
6 **ENERGY SECURITY**

7 **SEC. 30801. INSULAR AREAS ENERGY SECURITY.**

8 Section 604 of the Act entitled “An Act to authorize
9 appropriations for certain insular areas of the United
10 States, and for other purposes”, approved December 24,
11 1980 (Public Law 96–597; 94 Stat. 3480–3481), is
12 amended—

13 (1) in subsection (a)(4) by striking the period
14 and inserting a semicolon;

15 (2) by adding at the end of subsection (a) the
16 following new paragraphs:

17 “(5) electric power transmission and distribu-
18 tion lines in insular areas are inadequate to with-
19 stand damage caused by the hurricanes and ty-
20 phoons which frequently occur in insular areas and
21 such damage often costs millions of dollars to repair;
22 and

23 “(6) the refinement of renewable energy tech-
24 nologies since the publication of the 1982 Territorial
25 Energy Assessment prepared pursuant to subsection
26 (c) reveals the need to reassess the state of energy

1 production, consumption, infrastructure, reliance on
2 imported energy, and indigenous sources in regard
3 to the insular areas.”;

4 (3) by amending subsection (e) to read as fol-
5 lows:

6 “(e)(1) The Secretary of the Interior, in consultation
7 with the Secretary of Energy and the chief executive offi-
8 cer of each insular area, shall update the plans required
9 under subsection (c) by—

10 “(A) updating the contents required by sub-
11 section (c);

12 “(B) drafting long-term energy plans for such
13 insular areas with the objective of reducing, to the
14 extent feasible, their reliance on energy imports by
15 the year 2010 and maximizing, to the extent fea-
16 sible, use of indigenous energy sources; and

17 “(C) drafting long-term energy transmission
18 line plans for such insular areas with the objective
19 that the maximum percentage feasible of electric
20 power transmission and distribution lines in each in-
21 sular area be protected from damage caused by hur-
22 ricanes and typhoons.

23 “(2) Not later than May 31, 2004, the Secretary of
24 the Interior shall submit to the Congress the updated

1 plans for each insular area required by this subsection.”;
2 and

3 (4) by amending subsection (g)(4) to read as
4 follows:

5 “(4) POWER LINE GRANTS FOR TERRI-
6 TORIES.—

7 “(A) IN GENERAL.—The Secretary of the
8 Interior is authorized to make grants to govern-
9 ments of territories of the United States to
10 carry out eligible projects to protect electric
11 power transmission and distribution lines in
12 such territories from damage caused by hurri-
13 canes and typhoons.

14 “(B) ELIGIBLE PROJECTS.—The Secretary
15 may award grants under subparagraph (A) only
16 to governments of territories of the United
17 States that submit written project plans to the
18 Secretary for projects that meet the following
19 criteria:

20 “(i) The project is designed to protect
21 electric power transmission and distribu-
22 tion lines located in one or more of the ter-
23 ritories of the United States from damage
24 caused by hurricanes and typhoons.

1 “(ii) The project is likely to substan-
2 tially reduce the risk of future damage,
3 hardship, loss, or suffering.

4 “(iii) The project addresses one or
5 more problems that have been repetitive or
6 that pose a significant risk to public health
7 and safety.

8 “(iv) The project is not likely to cost
9 more than the value of the reduction in di-
10 rect damage and other negative impacts
11 that the project is designed to prevent or
12 mitigate. The cost benefit analysis required
13 by this criterion shall be computed on a
14 net present value basis.

15 “(v) The project design has taken into
16 consideration long-term changes to the
17 areas and persons it is designed to protect
18 and has manageable future maintenance
19 and modification requirements.

20 “(vi) The project plan includes an
21 analysis of a range of options to address
22 the problem it is designed to prevent or
23 mitigate and a justification for the selec-
24 tion of the project in light of that analysis.

1 “(vii) The applicant has demonstrated
2 to the Secretary that the matching funds
3 required by subparagraph (D) are avail-
4 able.

5 “(C) PRIORITY.—When making grants
6 under this paragraph, the Secretary shall give
7 priority to grants for projects which are likely
8 to—

9 “(i) have the greatest impact on re-
10 ducing future disaster losses; and

11 “(ii) best conform with plans that
12 have been approved by the Federal Govern-
13 ment or the government of the territory
14 where the project is to be carried out for
15 development or hazard mitigation for that
16 territory.

17 “(D) MATCHING REQUIREMENT.—The
18 Federal share of the cost for a project for which
19 a grant is provided under this paragraph shall
20 not exceed 75 percent of the total cost of that
21 project. The non-Federal share of the cost may
22 be provided in the form of cash or services.

23 “(E) TREATMENT OF FUNDS FOR CERTAIN
24 PURPOSES.—Grants provided under this para-
25 graph shall not be considered as income, a re-

1 source, or a duplicative program when deter-
2 mining eligibility or benefit levels for Federal
3 major disaster and emergency assistance.

4 “(F) AUTHORIZATION OF APPROPRIA-
5 TIONS.—There is authorized to be appropriated
6 to carry out this paragraph \$5,000,000 for each
7 fiscal year beginning after the date of the en-
8 actment of this paragraph.”.

9 **TITLE IX—MISCELLANEOUS** 10 **PROVISIONS**

11 **SEC. 30901. REPORT ON ENERGY FACILITY RIGHTS-OF-WAY** 12 **AND CORRIDORS ON FEDERAL LANDS.**

13 (a) REPORT TO CONGRESS.—

14 (1) IN GENERAL.—Not later than 1 year after
15 the date of the enactment of this section, the Sec-
16 retary of Agriculture and the Secretary of the Inte-
17 rior, in consultation with the Secretaries of Com-
18 merce, Defense, and Energy and the Federal Energy
19 Regulatory Commission, shall submit to the Commit-
20 tees on Energy and Commerce and Resources of the
21 House of Representatives and the Committee on En-
22 ergy and Natural Resources of the Senate a joint re-
23 port—

24 (A) addressing—

1 (i) the location of existing rights-of-
2 way and designated and de facto corridors
3 for oil and gas pipelines and electric trans-
4 mission and distribution facilities on Fed-
5 eral lands; and

6 (ii) opportunities for additional oil
7 and gas pipeline and electric transmission
8 capacity within such rights-of-way and cor-
9 ridors; and

10 (B) containing a plan for making available,
11 upon request, to the appropriate Federal, State,
12 and local agencies, tribal governments, and
13 other persons involved in the siting of oil and
14 gas pipelines and electricity transmission facili-
15 ties Geographic Information System-based in-
16 formation regarding the location of such exist-
17 ing rights-of-way and corridors and any planned
18 rights-of-way and corridors.

19 (2) CONSULTATIONS AND CONSIDERATIONS.—

20 In undertaking the report, the Secretary of the Inte-
21 rior and the Secretary of Agriculture shall consult
22 with—

23 (A) other agencies of Federal, State, tribal,
24 or local units of government as appropriate;

1 (B) persons involved in the siting of oil
2 and gas pipelines and electric transmission fa-
3 cilities; and

4 (C) other interested members of the public.

5 (3) LIMITATION.—The Secretary of the Interior
6 and the Secretary of Agriculture shall limit the dis-
7 tribution of the report and Geographic Information
8 System-based information referred to in paragraph
9 (1) as necessary for national and infrastructure se-
10 curity reasons, if either Secretary determines that
11 such information is authorized to be withheld from
12 public disclosure pursuant to a national security or
13 other exception under section 552(b) of title 5,
14 United States Code (popularly known as the “Free-
15 dom of Information Act”).

16 (b) CORRIDOR DESIGNATIONS.—

17 (1) WITHIN THE 11 CONTIGUOUS WESTERN
18 STATES.—Not later than 24 months after the date
19 of the enactment of this section, the Secretaries of
20 Agriculture, Commerce, Defense, Energy, and the
21 Interior, in consultation with the Federal Energy
22 Regulatory Commission and the affected utility in-
23 dustries, jointly shall—

24 (A) designate, pursuant to title 5 of the
25 Federal Land Policy and Management Act of

1 1976 (43 U.S.C. 1761 et seq.), and other appli-
2 cable Federal laws, corridors needed or useful
3 for oil and gas pipelines and electricity trans-
4 mission and facilities on Federal lands in the
5 eleven contiguous Western States as that term
6 is defined in section 103(o) of the Federal Land
7 Policy and Management Act of 1976 (43 U.S.C.
8 1702(o));

9 (B) perform any environmental reviews
10 that may be required to complete the designa-
11 tions of corridors for such facilities on Federal
12 lands in those States; and

13 (C) incorporate the designated corridors
14 into the relevant departmental and agency land
15 use and resource management plans or the
16 equivalent.

17 (2) WITHIN THE REMAINING STATES.—Not
18 later than 4 years after the date of the enactment
19 of this section, the Secretaries of Agriculture, Com-
20 merce, Defense, Energy, and the Interior, in con-
21 sultation with the Federal Energy Regulatory Com-
22 mission and the affected utility industries, jointly
23 shall identify corridors needed or useful for oil and
24 gas pipelines and electricity transmission and dis-
25 tribution facilities on Federal lands in the States

1 other than those described in paragraph (1), and
2 shall schedule prompt action to identify, designate,
3 and incorporate these corridors into the land use
4 plan.

5 (3) ONGOING RESPONSIBILITIES.—The Secre-
6 taries of Agriculture, Commerce, Defense, Energy,
7 and the Interior, in consultation with the Federal
8 Energy Regulatory Commission and the affected
9 utility industries, shall ensure that additional cor-
10 ridors as may be needed or useful for oil and gas
11 pipelines and electricity transmission and distribu-
12 tion facilities on Federal lands are promptly des-
13 ignated. The Secretaries shall provide a process for
14 the prompt review of applications for such corridors.

15 (c) FACTORS TO CONSIDER.—When carrying out this
16 section, the Secretaries shall take into account the need
17 for upgraded and new electricity transmission and dis-
18 tribution facilities to improve reliability, relieve congestion,
19 and enhance the capability of the national grid to deliver
20 electricity.

21 (d) DEFINITION OF CORRIDOR.—As used in this sec-
22 tion and for purposes of title V of the Federal Land Policy
23 and Management Act of 1976, the term ‘corridor’ shall
24 mean a linear strip of land without definite width, but lim-
25 ited by technological, environmental, and topographical

1 factors, and that contains or may in the future contain
2 one or more utility, communication, or transportation fa-
3 cilities. A corridor is a land use designation identified for
4 the purpose of establishing policy direction as to the pre-
5 ferred location of compatible linear facilities and compat-
6 ible and conflicting land uses. It does not imply entitle-
7 ment of use or limits as to siting facilities in additional
8 locations. Appropriate environmental review and regu-
9 latory permitting reflecting work already undertaken in
10 the designation of a corridor shall precede occupancy on
11 a project-specific basis.

12 **SEC. 30902. ELECTRICITY TRANSMISSION LINE RIGHT-OF-**
13 **WAY, CLEVELAND NATIONAL FOREST AND**
14 **ADJACENT PUBLIC LANDS, CALIFORNIA.**

15 (a) ISSUANCE.—Subject to subsection (c), the Sec-
16 retary of the Interior and the Secretary of Agriculture
17 shall issue all necessary grants, easements, permits, plan
18 amendments, and other approvals to allow for the siting
19 and construction of a high-voltage electricity transmission
20 line right-of-way running approximately north to south
21 through the Trabuco Ranger District of the Cleveland Na-
22 tional Forest in the State of California and adjacent lands
23 under the jurisdiction of the Bureau of Land Management
24 and the Forest Service. The right-of-way approvals shall
25 provide all necessary Federal authorization from the Sec-

1 retary of the Interior and the Secretary of Agriculture for
2 the routing, construction, operation, and maintenance of
3 a 500 KV transmission line capable of meeting the long-
4 term electricity transmission needs of the region between
5 the existing Valley-Serrano transmission line to the north
6 and the Telega–Escondido transmission line to the south,
7 and for connecting to future generating capacity that may
8 be developed in the region.

9 (b) PROTECTION OF WILDERNESS AREAS.—The Sec-
10 retary of the Interior and the Secretary of Agriculture
11 shall not allow any portion of a transmission line right-
12 of-way corridor identified in subsection (a) to enter any
13 identified wilderness area in existence as of the date of
14 the enactment of this section.

15 (c) ENVIRONMENTAL AND ADMINISTRATIVE RE-
16 VIEWS.—

17 (1) DEPARTMENT OF INTERIOR OR LOCAL
18 AGENCY.—The Secretary of the Interior, acting
19 through the Bureau of Land Management, shall be
20 the lead Federal agency with overall responsibility to
21 ensure completion of required environmental and
22 other reviews of the approvals to be issued under
23 subsection (a).

24 (2) NATIONAL FOREST SYSTEM LAND.—For the
25 portions of the corridor on National Forest System

1 lands, the Secretary of Agriculture shall complete all
2 required environmental reviews and administrative
3 actions in coordination with the Secretary of the In-
4 terior.

5 (3) EXPEDITIOUS COMPLETION.—The reviews
6 required for issuance of the approvals under sub-
7 section (a) shall be completed not later than 1 year
8 after the date of the enactment of this Act.

9 (d) TIME FOR ISSUANCE.—The necessary grants,
10 easements, permits, plan amendments, and other approv-
11 als for the transmission line right-of-way shall be issued
12 not later than 60 days after the completion of the environ-
13 mental reviews under subsection (c).

14 (e) OTHER TERMS AND CONDITIONS.—The trans-
15 mission line right-of-way shall be subject to such terms
16 and conditions as the Secretary of the Interior and the
17 Secretary of Agriculture consider necessary, as a result
18 of the environmental reviews under subsection (c), to pro-
19 tect the value of historic, cultural, and natural resources
20 under the jurisdiction of the Department of the Interior
21 or the Department of Agriculture.

22 (f) PREFERENCE AMONG PROPOSALS.—The Sec-
23 retary of the Interior and the Secretary of Agriculture
24 shall give a preference to any application or preapplication
25 proposal for a transmission line right-of-way, as described

1 in subsection (a), that was submitted before December 31,
2 2002, over all other applications and proposals for the
3 same or similar right-of-way submitted on or after that
4 date.

5 **SEC. 30903. CONSULTATION REGARDING ENERGY RIGHTS-**
6 **OF-WAY ON PUBLIC LANDS.**

7 (a) IN GENERAL.—Not later than 6 months after the
8 date of the enactment of this Act, the Secretary of the
9 Interior and the Secretary of Agriculture shall enter into,
10 and submit to the Congress, a memorandum of under-
11 standing in accordance with this section regarding the
12 processing of new applications for linear rights of way for
13 electrical transmission lines and oil or gas pipelines on
14 public lands within the jurisdiction of the Secretary of the
15 Interior and National Forest System lands within the ju-
16 risdiction of the Secretary of Agriculture.

17 (b) CONTENTS.—The memorandum of understanding
18 shall include provisions that—

19 (1) establish an administrative procedure for
20 processing right-of-way applications, including lines
21 of authority, steps in application processing, and
22 timeframes for application processing;

23 (2) provide for coordination of planning relating
24 to the granting of these rights-of-way;

1 (3) provide for coordination of environmental
2 compliance efforts to avoid duplication of effort; and

3 (4) provide for coordination of use of right-of-
4 way stipulations to achieve consistency.

5 **SEC. 30904. ENHANCING ENERGY EFFICIENCY IN MANAGE-**
6 **MENT OF FEDERAL LANDS.**

7 (a) SENSE OF THE CONGRESS.—It is the sense of the
8 Congress that Federal agencies should enhance the use of
9 energy efficient technologies in the management of natural
10 resources.

11 (b) ENERGY EFFICIENT BUILDINGS.—To the extent
12 practicable, the Secretary of the Interior, the Secretary
13 of Commerce, and the Secretary of Agriculture shall seek
14 to incorporate energy efficient technologies in public and
15 administrative buildings associated with management of
16 the National Park System, National Wildlife Refuge Sys-
17 tem, National Forest System, National Marine Sanc-
18 tuaries System, and other public lands and resources man-
19 aged by the Secretaries.

20 (c) ENERGY EFFICIENT VEHICLES.—To the extent
21 practicable, the Secretary of the Interior, the Secretary
22 of Commerce, and the Secretary of Agriculture shall seek
23 to use energy efficient motor vehicles, including vehicles
24 equipped with biodiesel or hybrid engine technologies, in
25 the management of the National Park System, National

1 Wildlife Refuge System, National Forest System, National
2 Marine Sanctuaries System, and other public lands and
3 resources managed by the Secretaries.

4 **SEC. 30905. PERMITTING OF WIND ENERGY DEVELOPMENT**
5 **PROJECTS ON PUBLIC LANDS.**

6 (a) REQUIRED POLICIES AND PROCEDURES.—The
7 Secretary of the Interior shall process right-of-way appli-
8 cations for wind energy site testing and monitoring facili-
9 ties on public lands administered by the Bureau of Land
10 Management in accordance with policies and procedures
11 that are substantially the same as those set forth in Bu-
12 reau of Land Management Instruction Memorandum No.
13 2003-020, dated October 16, 2002.

14 (b) LIMITATION ON RENT AND OTHER CHARGES.—

15 (1) IN GENERAL.—The Secretary of the Inte-
16 rior may not impose rent and other charges with re-
17 spect to any wind energy development project on
18 public lands that, in the aggregate, exceed 50 per-
19 cent of the maximum amount of rent that could be
20 charged with respect to that project under the terms
21 of the Bureau of Land Management Instruction
22 Memorandum referred to in subsection (a).

23 (2) TERMINATION.—Paragraph (1) shall not
24 apply after the earlier of—

1 (A) the date on which the Secretary of the
2 Interior determines there exists at least 10,000
3 megawatts of electricity generating capacity
4 from non-hydropower renewable energy re-
5 sources on public lands; or

6 (B) the end of the 10-year period begin-
7 ning on the date of the enactment of this Act.

8 (3) STATE SHARE NOT AFFECTED.—This sub-
9 section shall not affect any State share of rent and
10 other charges with respect to any wind energy devel-
11 opment project on public lands.

12 **SEC. 30906. SENSE OF THE CONGRESS REGARDING GEN-**
13 **ERATION CAPACITY OF ELECTRICITY FROM**
14 **RENEWABLE ENERGY RESOURCES ON PUB-**
15 **LIC LANDS.**

16 It is the sense of the Congress that the Secretary of
17 the Interior shall, within the next 10 years after the date
18 of the enactment of this Act, seek to have approved non-
19 hydropower renewable energy projects located on the pub-
20 lic lands with a generation capacity of at least 10,000
21 megawatts of electricity.

1 **SEC. 30907. ASSESSMENT OF OCEAN THERMAL ENERGY RE-**
2 **SOURCES.**

3 (a) RESOURCE ASSESSMENT.—Not later than 3
4 months after the date of the enactment of this Act, and
5 each year thereafter, the Secretary of the Interior shall—

6 (1) review assessments of ocean thermal energy
7 resources, other than resources of any area of the
8 Outer Continental Shelf that is subject to a morato-
9 rium on leasing for energy exploration or develop-
10 ment, that are available in the United States and its
11 territories and possessions; and

12 (2) undertake new assessments of such re-
13 sources as necessary.

14 (b) CONSIDERATIONS.—In reviewing and under-
15 taking assessments under subsection (a), the Secretary
16 shall take into account changes in market conditions,
17 available technologies, and other relevant factors.

18 (c) REPORTS.—Not later than 1 year after the date
19 of the enactment of this Act, and each year thereafter,
20 the Secretary shall publish a report on reviews and assess-
21 ments under subsection (a). Each report shall contain—

22 (1) a detailed inventory of the available amount
23 and characteristics of ocean thermal energy re-
24 sources;

1 (2) estimates of the costs of actions needed to
2 develop and accelerate efforts to commercialize ocean
3 thermal energy conversion; and

4 (3) such other information as the Secretary
5 considers would be useful in developing ocean ther-
6 mal energy resources.

7 **SEC. 30908. SENSE OF THE CONGRESS REGARDING DEVEL-**
8 **OPMENT OF MINERALS UNDER PADRE IS-**
9 **LAND NATIONAL SEASHORE.**

10 (a) FINDINGS.—The Congress finds the following:

11 (1) Pursuant to Public Law 87–712 (16 U.S.C.
12 459d et seq.; popularly known as the “Federal Ena-
13 bling Act”) and various deeds and actions there-
14 under, the United States is the owner of the surface
15 estate only of certain lands constituting the Padre
16 Island National Seashore.

17 (2) Ownership of the oil, gas, and other min-
18 erals in the subsurface estate of the lands consti-
19 tuting the Padre Island National Seashore was never
20 acquired by the United States and ownership of
21 those interests are held by the State of Texas and
22 private parties.

23 (3) The Federal Enabling Act expressly con-
24 templated that the United States would recognize
25 the ownership and future development of the oil,

1 gas, and other minerals in the subsurface estate of
2 the lands constituting the Padre Island National
3 Seashore by the owners and their mineral lessees
4 and recognized that approval of the State of Texas
5 was required to create Padre Island National Sea-
6 shore.

7 (4) Approval was given for the creation of
8 Padre Island National Seashore by the State of
9 Texas through TEX. REV. CIV. STAT. ANN. Art.
10 6077(t) (Vernon 1970), which expressly recognized
11 that development of the oil, gas, and other minerals
12 in the subsurface of the lands constituting Padre Is-
13 land National Seashore would be conducted with full
14 rights of ingress and egress under the laws of the
15 State of Texas.

16 (b) SENSE OF THE CONGRESS.—With regard to Fed-
17 eral law, any regulation of the development of oil, gas, or
18 other minerals in the subsurface of the lands constituting
19 Padre Island National Seashore should be made as if those
20 lands retained the status that they had on September 27,
21 1962.

22 **SEC. 30909. ENCOURAGING PROHIBITION OF OFF-SHORE**
23 **DRILLING IN THE GREAT LAKES.**

24 (a) FINDINGS.—The Congress finds that—

1 (1) the water resources of the Great Lakes
2 Basin are precious public natural resources, shared
3 and held in trust by the States of Illinois, Indiana,
4 Michigan, Minnesota, New York, Ohio, Pennsyl-
5 vania, and Wisconsin, and the Canadian Province of
6 Ontario;

7 (2) the environmental dangers associated with
8 off-shore drilling in the Great Lakes for oil and gas
9 outweigh the potential benefits of such drilling;

10 (3) in accordance with the Submerged Lands
11 Act (43 U.S.C. 1301 et seq.), each State that bor-
12 ders any of the Great Lakes has authority over the
13 area between that State's coastline and the bound-
14 ary of Canada or another State;

15 (4) the States of Illinois, Michigan, New York,
16 Pennsylvania, and Wisconsin each have a statutory
17 prohibition of off-shore drilling in the Great Lakes
18 for oil and gas;

19 (5) the States of Indiana, Minnesota, and Ohio
20 do not have such a prohibition; and

21 (6) the Canadian Province of Ontario does not
22 have such a prohibition, and drilling for and produc-
23 tion of gas occurs in the Canadian portion of Lake
24 Erie.

1 (b) ENCOURAGEMENT OF PROHIBITIONS ON OFF-
2 SHORE DRILLING.—The Congress encourages—

3 (1) the States of Illinois, Michigan, New York,
4 Pennsylvania, and Wisconsin to continue to prohibit
5 off-shore drilling in the Great Lakes for oil and gas;

6 (2) the States of Indiana, Minnesota, and Ohio
7 and the Canadian Province of Ontario to enact a
8 prohibition of such drilling; and

9 (3) the Canadian Province of Ontario to require
10 the cessation of any such drilling and any production
11 resulting from such drilling.

12 **DIVISION D—TAX**

13 **SEC. 40001. SHORT TITLE; ETC.**

14 (a) SHORT TITLE.—This division may be cited as the
15 “Energy Tax Policy Act of 2003”.

16 (b) AMENDMENT OF 1986 CODE.—Except as other-
17 wise expressly provided, whenever in this division an
18 amendment or repeal is expressed in terms of an amend-
19 ment to, or repeal of, a section or other provision, the ref-
20 erence shall be considered to be made to a section or other
21 provision of the Internal Revenue Code of 1986.

TITLE I—CONSERVATION

SEC. 41001. CREDIT FOR RESIDENTIAL SOLAR ENERGY PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

“SEC. 25C. RESIDENTIAL SOLAR ENERGY PROPERTY.

“(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

“(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year, and

“(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during the taxable year.

“(b) LIMITATIONS.—

“(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed—

“(A) \$2,000 for each system of property described in subsection (c)(1), and

“(B) \$2,000 for each system of property described in subsection (c)(2).

1 “(2) SAFETY CERTIFICATIONS.—No credit shall
2 be allowed under this section for an item of property
3 unless—

4 “(A) in the case of solar water heating
5 equipment, such equipment is certified for per-
6 formance and safety by the non-profit Solar
7 Rating Certification Corporation or a com-
8 parable entity endorsed by the government of
9 the State in which such property is installed,
10 and

11 “(B) in the case of a photovoltaic system,
12 such system meets appropriate fire and electric
13 code requirements.

14 “(c) DEFINITIONS.—For purposes of this section—

15 “(1) QUALIFIED SOLAR WATER HEATING PROP-
16 ERTY EXPENDITURE.—The term ‘qualified solar
17 water heating property expenditure’ means an ex-
18 penditure for property to heat water for use in a
19 dwelling unit located in the United States and used
20 as a residence if at least half of the energy used by
21 such property for such purpose is derived from the
22 sun.

23 “(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-
24 PENDITURE.—The term ‘qualified photovoltaic prop-
25 erty expenditure’ means an expenditure for property

1 which uses solar energy to generate electricity for
2 use in a dwelling unit.

3 “(3) SOLAR PANELS.—No expenditure relating
4 to a solar panel or other property installed as a roof
5 (or portion thereof) shall fail to be treated as prop-
6 erty described in paragraph (1) or (2) solely because
7 it constitutes a structural component of the struc-
8 ture on which it is installed.

9 “(4) LABOR COSTS.—Expenditures for labor
10 costs properly allocable to the onsite preparation, as-
11 sembly, or original installation of the property de-
12 scribed in paragraph (1) or (2) and for piping or
13 wiring to interconnect such property to the dwelling
14 unit shall be taken into account for purposes of this
15 section.

16 “(5) SWIMMING POOLS, ETC., USED AS STOR-
17 AGE MEDIUM.—Expenditures which are properly al-
18 locable to a swimming pool, hot tub, or any other
19 energy storage medium which has a function other
20 than the function of such storage shall not be taken
21 into account for purposes of this section.

22 “(d) SPECIAL RULES.—

23 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-
24 CUPANCY.—In the case of any dwelling unit which is
25 jointly occupied and used during any calendar year

1 as a residence by 2 or more individuals the following
2 shall apply:

3 “(A) The amount of the credit allowable
4 under subsection (a) by reason of expenditures
5 made during such calendar year by any of such
6 individuals with respect to such dwelling unit
7 shall be determined by treating all of such indi-
8 viduals as 1 taxpayer whose taxable year is
9 such calendar year.

10 “(B) There shall be allowable with respect
11 to such expenditures to each of such individ-
12 uals, a credit under subsection (a) for the tax-
13 able year in which such calendar year ends in
14 an amount which bears the same ratio to the
15 amount determined under subparagraph (A) as
16 the amount of such expenditures made by such
17 individual during such calendar year bears to
18 the aggregate of such expenditures made by all
19 of such individuals during such calendar year.

20 “(C) Subparagraphs (A) and (B) shall be
21 applied separately with respect to qualified
22 solar water heating property expenditures and
23 qualified photovoltaic property expenditures.

24 “(2) TENANT-STOCKHOLDER IN COOPERATIVE
25 HOUSING CORPORATION.—In the case of an indi-

1 vidual who is a tenant-stockholder (as defined in sec-
2 tion 216) in a cooperative housing corporation (as
3 defined in such section), such individual shall be
4 treated as having made his tenant-stockholder's pro-
5 portionate share (as defined in section 216(b)(3)) of
6 any expenditures of such corporation.

7 “(3) CONDOMINIUMS.—

8 “(A) IN GENERAL.—In the case of an indi-
9 vidual who is a member of a condominium man-
10 agement association with respect to a condo-
11 minium which he owns, such individual shall be
12 treated as having made his proportionate share
13 of any expenditures of such association.

14 “(B) CONDOMINIUM MANAGEMENT ASSO-
15 CIATION.—For purposes of this paragraph, the
16 term ‘condominium management association’
17 means an organization which meets the require-
18 ments of paragraph (1) of section 528(c) (other
19 than subparagraph (E) thereof) with respect to
20 a condominium project substantially all of the
21 units of which are used as residences.

22 “(4) ALLOCATION IN CERTAIN CASES.—If less
23 than 80 percent of the use of an item is for nonbusi-
24 ness purposes, only that portion of the expenditures

1 for such item which is properly allocable to use for
2 nonbusiness purposes shall be taken into account.

3 “(5) WHEN EXPENDITURE MADE; AMOUNT OF
4 EXPENDITURE.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), an expenditure with respect
7 to an item shall be treated as made when the
8 original installation of the item is completed.

9 “(B) EXPENDITURES PART OF BUILDING
10 CONSTRUCTION.—In the case of an expenditure
11 in connection with the construction or recon-
12 struction of a structure, such expenditure shall
13 be treated as made when the original use of the
14 constructed or reconstructed structure by the
15 taxpayer begins.

16 “(C) AMOUNT.—The amount of any ex-
17 penditure shall be the cost thereof.

18 “(6) PROPERTY FINANCED BY SUBSIDIZED EN-
19 ERGY FINANCING.—For purposes of determining the
20 amount of expenditures made by any individual with
21 respect to any dwelling unit, there shall not be taken
22 into account expenditures which are made from sub-
23 sidized energy financing (as defined in section
24 48(a)(4)(A)).

1 “(e) BASIS ADJUSTMENTS.—For purposes of this
2 subtitle, if a credit is allowed under this section for any
3 expenditure with respect to any property, the increase in
4 the basis of such property which would (but for this sub-
5 section) result from such expenditure shall be reduced by
6 the amount of the credit so allowed.

7 “(f) TERMINATION.—The credit allowed under this
8 section shall not apply to taxable years beginning after
9 December 31, 2006 (December 31, 2008, with respect to
10 qualified photovoltaic property expenditures).”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Subsection (a) of section 1016 is amended
13 by striking “and” at the end of paragraph (27), by
14 striking the period at the end of paragraph (28) and
15 inserting “, and”, and by adding at the end the fol-
16 lowing new paragraph:

17 “(29) to the extent provided in section 25C(e),
18 in the case of amounts with respect to which a credit
19 has been allowed under section 25C.”.

20 (2) The table of sections for subpart A of part
21 IV of subchapter A of chapter 1 is amended by in-
22 serting after the item relating to section 25B the fol-
23 lowing new item:

 “Sec. 25C. Residential solar energy property.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years ending after De-
 3 cember 31, 2003.

4 **SEC. 41002. EXTENSION AND EXPANSION OF CREDIT FOR**
 5 **ELECTRICITY PRODUCED FROM RENEWABLE**
 6 **RESOURCES.**

7 (a) EXTENSION OF CREDIT FOR WIND AND CLOSED-
 8 LOOP BIOMASS FACILITIES.—Subparagraphs (A) and (B)
 9 of section 45(c)(3) are each amended by striking “2004”
 10 and inserting “2007”.

11 (b) EXPANSION OF CREDIT FOR OPEN-LOOP BIO-
 12 MASS, LANDFILL GAS FACILITIES, AND TRASH COMBUS-
 13 TION FACILITIES.—Paragraph (3) of section 45(c) is
 14 amended by adding at the end the following new subpara-
 15 graphs:

16 “(D) OPEN-LOOP BIOMASS FACILITIES.—
 17 In the case of a facility using open-loop biomass
 18 to produce electricity, the term ‘qualified facil-
 19 ity’ means any facility owned by the taxpayer
 20 which is originally placed in service before Jan-
 21 uary 1, 2007.

22 “(E) LANDFILL GAS FACILITIES.—In the
 23 case of a facility producing electricity from gas
 24 derived from the biodegradation of municipal
 25 solid waste, the term ‘qualified facility’ means

1 any facility owned by the taxpayer which is
2 originally placed in service before January 1,
3 2007.

4 “(F) TRASH COMBUSTION FACILITIES.—In
5 the case of a facility which burns municipal
6 solid waste to produce electricity, the term
7 ‘qualified facility’ means any facility owned by
8 the taxpayer which is originally placed in serv-
9 ice after the date of the enactment of this sub-
10 paragraph and before January 1, 2007.’”.

11 (c) DEFINITION AND SPECIAL RULES.—Subsection
12 (c) of section 45 is amended by adding at the end the
13 following new paragraphs:

14 “(5) OPEN-LOOP BIOMASS.—The term ‘open-
15 loop biomass’ means any solid, nonhazardous, cel-
16 lulosic waste material which is segregated from other
17 waste materials and which is derived from—

18 “(A) any of the following forest-related re-
19 sources: mill residues, precommercial thinnings,
20 slash, and brush,

21 “(B) solid wood waste materials, including
22 waste pallets, crates, dunnage, manufacturing
23 and construction wood wastes (other than pres-
24 sure-treated, chemically-treated, or painted
25 wood wastes), and landscape or right-of-way

1 tree trimmings, but not including municipal
2 solid waste (garbage), gas derived from the bio-
3 degradation of solid waste, or paper that is
4 commonly recycled, or

5 “(C) agriculture sources, including orchard
6 tree crops, vineyard, grain, legumes, sugar, and
7 other crop by-products or residues.

8 Such term shall not include closed-loop biomass.

9 “(6) REDUCED CREDIT FOR CERTAIN
10 PREEFFECTIVE DATE FACILITIES.—In the case of
11 any facility described in subparagraph (D) or (E) of
12 paragraph (3) which is placed in service before the
13 date of the enactment of this paragraph—

14 “(A) subsection (a)(1) shall be applied by
15 substituting ‘1.0 cents’ for ‘1.5 cents’, and

16 “(B) the 5-year period beginning on the
17 date of the enactment of this paragraph shall
18 be substituted in lieu of the 10-year period in
19 subsection (a)(2)(A)(ii).

20 “(7) CREDIT ELIGIBILITY FOR OPEN-LOOP BIO-
21 MASS FACILITIES.—In the case of any facility de-
22 scribed in paragraph (3)(D) which is placed in serv-
23 ice before the date of enactment of this paragraph,
24 if the owner of such facility is not the producer of
25 the electricity, the person eligible for the credit al-

1 lowable under subsection (a) is the lessee or the op-
2 erator of such facility.

3 “(8) LIMIT ON REDUCTIONS FOR GRANTS, ETC.,
4 FOR OPEN-LOOP BIOMASS FACILITIES.—If the
5 amount of the credit determined under subsection
6 (a) with respect to any open-loop biomass facility is
7 required to be reduced under paragraph (3) of sub-
8 section (b), the fraction under such paragraph shall
9 in no event be greater than $\frac{1}{2}$.

10 “(9) COORDINATION WITH SECTION 29.—The
11 term ‘qualified facility’ shall not include any facility
12 the production from which is allowed as a credit
13 under section 29 for the taxable year or any prior
14 taxable year.”.

15 (d) QUALIFIED ENERGY RESOURCES.—Paragraph
16 (1) of section 45(c) (relating to qualified energy resources)
17 is amended to read as follows:

18 “(1) QUALIFIED ENERGY RESOURCES.—The
19 term ‘qualified energy resources’ means any resource
20 described in paragraph (3) which is used to generate
21 electricity at a qualified facility.”.

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to electricity sold after the date
24 of the enactment of this Act, in taxable years ending after
25 such date.

1 **SEC. 41003. CREDIT FOR QUALIFIED FUEL CELL POWER**
2 **PLANTS.**

3 (a) BUSINESS PROPERTY.—

4 (1) IN GENERAL.—Subparagraph (A) of section
5 48(a)(3) (defining energy property) is amended by
6 striking “or” at the end of clause (i), by adding
7 “or” at the end of clause (ii), and by inserting after
8 clause (ii) the following new clause:

9 “(iii) equipment which is part of a
10 qualified fuel cell power plant,”.

11 (2) QUALIFIED FUEL CELL POWER PLANT.—
12 Subsection (a) of section 48 is amended by redesignig-
13 nating paragraphs (4) and (5) as paragraphs (5)
14 and (6), respectively, and by inserting after para-
15 graph (3) the following new paragraph:

16 “(4) QUALIFIED FUEL CELL POWER PLANT.—
17 For purposes of this subsection—

18 “(A) IN GENERAL.—The term ‘qualified
19 fuel cell power plant’ means a fuel cell power
20 plant that has an electricity-only generation ef-
21 ficiency greater than 30 percent.

22 “(B) LIMITATION.—The energy credit with
23 respect to any qualified fuel cell power plant for
24 any taxable year shall not exceed—

25 “(i) \$500 for each ½ kilowatt of ca-
26 pacity of the power plant, reduced by

1 “(ii) the aggregate energy credits al-
2 lowed with respect to such power plant for
3 all prior taxable years.

4 “(C) FUEL CELL POWER PLANT.—The
5 term ‘fuel cell power plant’ means an integrated
6 system comprised of a fuel cell stack assembly
7 and associated balance of plant components
8 that converts a fuel into electricity using elec-
9 trochemical means.

10 “(D) TERMINATION.—Such term shall not
11 include any property placed in service after De-
12 cember 31, 2006.”.

13 (3) EFFECTIVE DATE.—The amendments made
14 by this subsection shall apply to property placed in
15 service after December 31, 2003, under rules similar
16 to the rules of section 48(m) of the Internal Revenue
17 Code of 1986 (as in effect on the day before the
18 date of the enactment of the Revenue Reconciliation
19 Act of 1990).

20 (b) NONBUSINESS PROPERTY.—

21 (1) IN GENERAL.—Subpart A of part IV of sub-
22 chapter A of chapter 1 (relating to nonrefundable
23 personal credits) is amended by inserting after sec-
24 tion 25C the following new section:

1 **“SEC. 25D. NONBUSINESS QUALIFIED FUEL CELL POWER**
2 **PLANT.**

3 “(a) IN GENERAL.—In the case of an individual,
4 there shall be allowed as a credit against the tax imposed
5 by this chapter for the taxable year an amount equal to
6 10 percent of the qualified fuel cell power plant expendi-
7 tures which are paid or incurred during such year.

8 “(b) LIMITATIONS.—The credit allowed under sub-
9 section (a) with respect to any qualified fuel cell power
10 plant for any taxable year shall not exceed—

11 “(1) \$500 for each $\frac{1}{2}$ kilowatt of capacity of
12 the power plant, reduced by

13 “(2) the aggregate energy credits allowed with
14 respect to such power plant for all prior taxable
15 years.

16 “(c) QUALIFIED FUEL CELL POWER PLANT EX-
17 PENDITURES.—For purposes of this section, the term
18 ‘qualified fuel cell power plant expenditures’ means ex-
19 penditures by the taxpayer for any qualified fuel cell power
20 plant (as defined in section 48(a)(4))—

21 “(1) which meets the requirements of subpara-
22 graphs (B) and (D) of section 48(a)(3), and

23 “(2) which is installed on or in connection with
24 a dwelling unit—

25 “(A) which is located in the United States,
26 and

1 “(B) which is used by the taxpayer as a
2 residence.

3 Such term includes expenditures for labor costs properly
4 allocable to the onsite preparation, assembly, or original
5 installation of the property.

6 “(d) SPECIAL RULES.—For purposes of this section,
7 rules similar to the rules of section 25C(d) shall apply.

8 “(e) BASIS ADJUSTMENTS.—For purposes of this
9 subtitle, if a credit is allowed under this section for any
10 expenditure with respect to any property, the increase in
11 the basis of such property which would (but for this sub-
12 section) result from such expenditure shall be reduced by
13 the amount of the credit so allowed.

14 “(f) TERMINATION.—This section shall not apply to
15 any expenditure made after December 31, 2006.”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Subsection (a) of section 1016 is
18 amended by striking “and” at the end of para-
19 graph (28), by striking the period at the end of
20 paragraph (29) and inserting “, and”, and by
21 adding at the end the following new paragraph:

22 “(30) to the extent provided in section 25D(e),
23 in the case of amounts with respect to which a credit
24 has been allowed under section 25D.”.

1 (B) The table of sections for subpart A of
 2 part IV of subchapter A of chapter 1 is amend-
 3 ed by inserting after the item relating to section
 4 25C the following new item:

“Sec. 25D. Nonbusiness qualified fuel cell power plant.”.

5 (3) EFFECTIVE DATE.—The amendments made
 6 by this subsection shall apply to expenditures paid
 7 or incurred after December 31, 2003, in taxable
 8 years ending after such date.

9 **SEC. 41004. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**
 10 **MENTS TO EXISTING HOMES.**

11 (a) IN GENERAL.—Subpart A of part IV of sub-
 12 chapter A of chapter 1 (relating to nonrefundable personal
 13 credits) is amended by inserting after section 25D the fol-
 14 lowing new section:

15 **“SEC. 25E. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**
 16 **ING HOMES.**

17 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
 18 dividual, there shall be allowed as a credit against the tax
 19 imposed by this chapter for the taxable year an amount
 20 equal to 20 percent of the amount paid or incurred by
 21 the taxpayer for qualified energy efficiency improvements
 22 installed during such taxable year.

23 “(b) LIMITATIONS.—

1 “(1) MAXIMUM CREDIT.—The credit allowed by
2 this section with respect to a dwelling shall not ex-
3 ceed \$2,000.

4 “(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER
5 ON SAME DWELLING TAKEN INTO ACCOUNT.—If a
6 credit was allowed to the taxpayer under subsection
7 (a) with respect to a dwelling in 1 or more prior tax-
8 able years, the amount of the credit otherwise allow-
9 able for the taxable year with respect to that dwell-
10 ing shall not exceed the amount of \$2,000 reduced
11 by the sum of the credits allowed under subsection
12 (a) to the taxpayer with respect to the dwelling for
13 all prior taxable years.

14 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the
15 credit allowable under subsection (a) exceeds the limita-
16 tion imposed by section 26(a) for such taxable year re-
17 duced by the sum of the credits allowable under this sub-
18 part (other than this section) for such taxable year, such
19 excess shall be carried to the succeeding taxable year and
20 added to the credit allowable under subsection (a) for such
21 succeeding taxable year.

22 “(d) QUALIFIED ENERGY EFFICIENCY IMPROVE-
23 MENTS.—For purposes of this section, the term ‘qualified
24 energy efficiency improvements’ means any energy effi-
25 cient building envelope component which meets the pre-

1 scriptive criteria for such component established by the
2 2000 International Energy Conservation Code (or, in the
3 case of metal roofs with appropriate pigmented coatings,
4 meets the Energy Star program requirements), if—

5 “(1) such component is installed in or on a
6 dwelling—

7 “(A) located in the United States, and

8 “(B) owned and used by the taxpayer as
9 the taxpayer’s principal residence (within the
10 meaning of section 121),

11 “(2) the original use of such component com-
12 mences with the taxpayer, and

13 “(3) such component reasonably can be ex-
14 pected to remain in use for at least 5 years.

15 If the aggregate cost of such components with respect to
16 any dwelling exceeds \$1,000, such components shall be
17 treated as qualified energy efficiency improvements only
18 if such components are also certified in accordance with
19 subsection (e) as meeting such criteria.

20 “(e) CERTIFICATION.—The certification described in
21 subsection (d) shall be—

22 “(1) determined on the basis of the technical
23 specifications or applicable ratings (including prod-
24 uct labeling requirements) for the measurement of
25 energy efficiency, based upon energy use or building

1 envelope component performance, for the energy effi-
2 cient building envelope component,

3 “(2) provided by a local building regulatory au-
4 thority, a utility, a manufactured home production
5 inspection primary inspection agency (IPLA), or an
6 accredited home energy rating system provider who
7 is accredited by or otherwise authorized to use ap-
8 proved energy performance measurement methods by
9 the Residential Energy Services Network
10 (RESNET), and

11 “(3) made in writing in a manner that specifies
12 in readily verifiable fashion the energy efficient
13 building envelope components installed and their re-
14 spective energy efficiency levels.

15 “(f) DEFINITIONS AND SPECIAL RULES.—

16 “(1) TENANT-STOCKHOLDER IN COOPERATIVE
17 HOUSING CORPORATION.—In the case of an indi-
18 vidual who is a tenant-stockholder (as defined in sec-
19 tion 216) in a cooperative housing corporation (as
20 defined in such section), such individual shall be
21 treated as having paid his tenant-stockholder’s pro-
22 portionate share (as defined in section 216(b)(3)) of
23 the cost of qualified energy efficiency improvements
24 made by such corporation.

25 “(2) CONDOMINIUMS.—

1 “(A) IN GENERAL.—In the case of an indi-
2 vidual who is a member of a condominium man-
3 agement association with respect to a condo-
4 minium which he owns, such individual shall be
5 treated as having paid his proportionate share
6 of the cost of qualified energy efficiency im-
7 provements made by such association.

8 “(B) CONDOMINIUM MANAGEMENT ASSO-
9 CIATION.—For purposes of this paragraph, the
10 term ‘condominium management association’
11 means an organization which meets the require-
12 ments of paragraph (1) of section 528(c) (other
13 than subparagraph (E) thereof) with respect to
14 a condominium project substantially all of the
15 units of which are used as residences.

16 “(3) BUILDING ENVELOPE COMPONENT.—The
17 term ‘building envelope component’ means insulation
18 material or system which is specifically and pri-
19 marily designed to reduce the heat loss or gain of a
20 dwelling when installed in or on such dwelling, exte-
21 rior windows (including skylights) and doors, and
22 metal roofs with appropriate pigmented coatings
23 which are specifically and primarily designed to re-
24 duce the heat gain of a dwelling when installed in
25 or on such dwelling.

1 “(4) MANUFACTURED HOMES INCLUDED.—For
2 purposes of this section, the term ‘dwelling’ includes
3 a manufactured home which conforms to Federal
4 Manufactured Home Construction and Safety Stand-
5 ards (section 3280 of title 24, Code of Federal Reg-
6 ulations, as in effect on April 3, 2003).

7 “(g) BASIS ADJUSTMENT.—For purposes of this sub-
8 title, if a credit is allowed under this section for any ex-
9 penditure with respect to any property, the increase in the
10 basis of such property which would (but for this sub-
11 section) result from such expenditure shall be reduced by
12 the amount of the credit so allowed.

13 “(h) APPLICATION OF SECTION.—This section shall
14 apply to qualified energy efficiency improvements installed
15 after December 31, 2003, and before January 1, 2007.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Subsection (c) of section 23 is amended by
18 striking “section 1400C” and inserting “sections
19 25E and 1400C”.

20 (2) Subsection (a) of section 1016 is amended
21 by striking “and” at the end of paragraph (29), by
22 striking the period at the end of paragraph (30) and
23 inserting “, and”, and by adding at the end the fol-
24 lowing new paragraph:

1 “(31) to the extent provided in section 25E(g),
 2 in the case of amounts with respect to which a credit
 3 has been allowed under section 25E.”.

4 (3) Subsection (d) of section 1400C is amended
 5 by inserting “and section 25E” after “this section”.

6 (4) The table of sections for subpart A of part
 7 IV of subchapter A of chapter 1 is amended by in-
 8 serting after the item relating to section 25D the
 9 following new item:

“Sec. 25E. Energy efficiency improvements to existing homes.”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years ending after De-
 12 cember 31, 2003.

13 **SEC. 41005. BUSINESS CREDIT FOR CONSTRUCTION OF NEW**
 14 **ENERGY EFFICIENT HOME.**

15 (a) IN GENERAL.—Subpart D of part IV of sub-
 16 chapter A of chapter 1 (relating to business related cred-
 17 its) is amended by inserting after section 45F the fol-
 18 lowing new section:

19 **“SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.**

20 “(a) IN GENERAL.—For purposes of section 38, in
 21 the case of an eligible contractor, the credit determined
 22 under this section for the taxable year is an amount equal
 23 to the aggregate adjusted bases of all energy efficient
 24 property installed in a qualified new energy efficient home
 25 during construction of such home.

1 “(b) LIMITATIONS.—

2 “(1) MAXIMUM CREDIT.—

3 “(A) IN GENERAL.—The credit allowed by
4 this section with respect to a dwelling shall not
5 exceed \$2,000.

6 “(B) PRIOR CREDIT AMOUNTS ON SAME
7 DWELLING TAKEN INTO ACCOUNT.—If a credit
8 was allowed under subsection (a) with respect
9 to a dwelling in 1 or more prior taxable years,
10 the amount of the credit otherwise allowable for
11 the taxable year with respect to that dwelling
12 shall not exceed the amount of \$2,000 reduced
13 by the sum of the credits allowed under sub-
14 section (a) with respect to the dwelling for all
15 prior taxable years.

16 “(2) COORDINATION WITH REHABILITATION
17 AND ENERGY CREDITS.—For purposes of this sec-
18 tion—

19 “(A) the basis of any property referred to
20 in subsection (a) shall be reduced by that por-
21 tion of the basis of any property which is attrib-
22 utable to qualified rehabilitation expenditures
23 (as defined in section 47(c)(2)) or to the energy
24 percentage of energy property (as determined
25 under section 48(a)), and

1 “(B) expenditures taken into account
2 under either section 47 or 48(a) shall not be
3 taken into account under this section.

4 “(c) DEFINITIONS.—For purposes of this section—

5 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-
6 ble contractor’ means the person who constructed
7 the new energy efficient home, or in the case of a
8 manufactured home which conforms to Federal
9 Manufactured Home Construction and Safety Stand-
10 ards (section 3280 of title 24, Code of Federal Reg-
11 ulations, as in effect on April 3, 2003), the manufac-
12 tured home producer of such home.

13 “(2) ENERGY EFFICIENT PROPERTY.—The
14 term ‘energy efficient property’ means any energy
15 efficient building envelope component, and any en-
16 ergy efficient heating or cooling appliance.

17 “(3) QUALIFIED NEW ENERGY EFFICIENT
18 HOME.—The term ‘qualified new energy efficient
19 home’ means a dwelling—

20 “(A) located in the United States,

21 “(B) the construction of which is substan-
22 tially completed after December 31, 2003,

23 “(C) the original use of which is as a prin-
24 cipal residence (within the meaning of section
25 121) which commences with the person who ac-

1 quires such dwelling from the eligible con-
2 tractor, and

3 “(D) which is certified to have a level of
4 annual heating and cooling energy consumption
5 that is at least 30 percent below the annual
6 level of heating and cooling energy consumption
7 of a comparable dwelling constructed in accord-
8 ance with the standards of the 2000 Inter-
9 national Energy Conservation Code and to have
10 building envelope component improvements ac-
11 count for $\frac{1}{3}$ of such 30 percent.

12 “(4) CONSTRUCTION.—The term ‘construction’
13 includes reconstruction and rehabilitation.

14 “(5) ACQUIRE.—The term ‘acquire’ includes
15 purchase and, in the case of reconstruction and re-
16 habilitation, such term includes a binding written
17 contract for such reconstruction or rehabilitation.

18 “(6) BUILDING ENVELOPE COMPONENT.—The
19 term ‘building envelope component’ means insulation
20 material or system which is specifically and pri-
21 marily designed to reduce the heat loss or gain of a
22 dwelling when installed in or on such dwelling, exte-
23 rior windows (including skylights) and doors, and
24 metal roofs with appropriate pigmented coatings
25 which are specifically and primarily designed to re-

duce the heat gain of a dwelling when installed in
or on such dwelling.

“(7) MANUFACTURED HOME INCLUDED.—The
term ‘dwelling’ includes a manufactured home con-
forming to Federal Manufactured Home Construc-
tion and Safety Standards (section 3280 of title 24,
Code of Federal Regulations, as in effect on April 3,
2003).

“(d) CERTIFICATION.—

“(1) METHOD.—A certification described in
subsection (c)(3)(D) shall be determined on the
basis of one of the following methods:

“(A) The technical specifications or appli-
cable ratings (including product labeling re-
quirements) for the measurement of energy effi-
ciency for the energy efficient building envelope
component or energy efficient heating or cooling
appliance, based upon energy use or building
envelope component performance.

“(B) An energy performance measurement
method that utilizes computer software ap-
proved by organizations designated by the Sec-
retary.

“(2) PROVIDER.—Such certification shall be
provided by—

1 “(A) in the case of a method described in
2 paragraph (1)(A), a local building regulatory
3 authority, a utility, a manufactured home pro-
4 duction inspection primary inspection agency
5 (IPLA), or an accredited home energy rating
6 systems provider who is accredited by, or other-
7 wise authorized to use, approved energy per-
8 formance measurement methods by the Home
9 Energy Ratings Systems Council or the Na-
10 tional Association of State Energy Officials, or

11 “(B) in the case of a method described in
12 paragraph (1)(B), an individual recognized by
13 an organization designated by the Secretary for
14 such purposes.

15 “(3) FORM.—Such certification shall be made
16 in writing in a manner that specifies in readily
17 verifiable fashion the energy efficient building enve-
18 lope components and energy efficient heating or
19 cooling appliances installed and their respective en-
20 ergy efficiency levels, and in the case of a method
21 described in subparagraph (B) of paragraph (1), ac-
22 companied by written analysis documenting the
23 proper application of a permissible energy perform-
24 ance measurement method to the specific cir-
25 cumstances of such dwelling.

1 “(4) REGULATIONS.—

2 “(A) IN GENERAL.—In prescribing regula-
3 tions under this subsection for energy perform-
4 ance measurement methods, the Secretary shall
5 prescribe procedures for calculating annual en-
6 ergy costs for heating and cooling and cost sav-
7 ings and for the reporting of the results. Such
8 regulations shall—

9 “(i) be based on the National Home
10 Energy Rating Technical Guidelines of the
11 National Association of State Energy Offi-
12 cials, the Home Energy Rating Guidelines
13 of the Home Energy Rating Systems
14 Council, or the modified 2001 California
15 Residential ACM manual,

16 “(ii) provide that any calculation pro-
17 cedures be developed such that the same
18 energy efficiency measures allow a home to
19 qualify for the credit under this section re-
20 gardless of whether the house uses a gas
21 or oil furnace or boiler or an electric heat
22 pump, and

23 “(iii) require that any computer soft-
24 ware allow for the printing of the Federal
25 tax forms necessary for the credit under

1 this section and explanations for the home-
2 buyer of the energy efficient features that
3 were used to comply with the requirements
4 of this section.

5 “(B) PROVIDERS.—For purposes of para-
6 graph (2)(B), the Secretary shall establish re-
7 quirements for the designation of individuals
8 based on the requirements for energy consult-
9 ants and home energy raters specified by the
10 National Association of State Energy Officials.

11 “(e) BASIS ADJUSTMENT.—For purposes of this sub-
12 title, if a credit is determined under this section for any
13 expenditure with respect to any property, the increase in
14 the basis of such property which would (but for this sub-
15 section) result from such expenditure shall be reduced by
16 the amount of the credit so determined.

17 “(f) APPLICATION OF SECTION.—Subsection (a) shall
18 apply to dwellings purchased during the period beginning
19 on January 1, 2004, and ending on December 31, 2006.”.

20 (b) CREDIT MADE PART OF GENERAL BUSINESS
21 CREDIT.—Subsection (b) of section 38 (relating to current
22 year business credit) is amended by striking “plus” at the
23 end of paragraph (14), by striking the period at the end
24 of paragraph (15) and inserting “, plus”, and by adding
25 at the end thereof the following new paragraph:

1 “(16) the new energy efficient home credit de-
2 termined under section 45G.”.

3 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C
4 (relating to certain expenses for which credits are allow-
5 able) is amended by adding at the end thereof the fol-
6 lowing new subsection:

7 “(d) NEW ENERGY EFFICIENT HOME EXPENSES.—
8 No deduction shall be allowed for that portion of expenses
9 for a new energy efficient home otherwise allowable as a
10 deduction for the taxable year which is equal to the
11 amount of the credit determined for such taxable year
12 under section 45G.”.

13 (d) LIMITATION ON CARRYBACK.—Subsection (d) of
14 section 39 is amended by adding at the end the following
15 new paragraph:

16 “(11) NO CARRYBACK OF NEW ENERGY EFFI-
17 CIENT HOME CREDIT BEFORE EFFECTIVE DATE.—
18 No portion of the unused business credit for any
19 taxable year which is attributable to the credit deter-
20 mined under section 45G may be carried back to any
21 taxable year ending before January 1, 2004.”.

22 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
23 CREDITS.—Subsection (c) of section 196 is amended by
24 striking “and” at the end of paragraph (9), by striking
25 the period at the end of paragraph (10) and inserting “,

1 and”, and by adding after paragraph (10) the following
 2 new paragraph:

3 “(11) the new energy efficient home credit de-
 4 termined under section 45G.”.

5 (f) CLERICAL AMENDMENT.—The table of sections
 6 for subpart D of part IV of subchapter A of chapter 1
 7 is amended by inserting after the item relating to section
 8 45F the following new item:

“Sec. 45G. New energy efficient home credit.”.

9 (g) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to taxable years ending after De-
 11 cember 31, 2003.

12 **SEC. 41006. ENERGY CREDIT FOR COMBINED HEAT AND**
 13 **POWER SYSTEM PROPERTY.**

14 (a) IN GENERAL.—Subparagraph (A) of section
 15 48(a)(3) (defining energy property) is amended by strik-
 16 ing “or” at the end of clause (ii), by adding “or” at the
 17 end of clause (iii), and by inserting after clause (iii) the
 18 following new clause:

19 “(iv) combined heat and power system
 20 property,”.

21 (b) COMBINED HEAT AND POWER SYSTEM PROP-
 22 erty.—Subsection (a) of section 48 is amended by redes-
 23 ignating paragraphs (5) and (6) as paragraphs (6) and
 24 (7), respectively, and by inserting after paragraph (4) the
 25 following new paragraph:

1 “(5) COMBINED HEAT AND POWER SYSTEM
2 PROPERTY.—For purposes of this subsection—

3 “(A) COMBINED HEAT AND POWER SYS-
4 TEM PROPERTY.—The term ‘combined heat and
5 power system property’ means property com-
6 prising a system—

7 “(i) which uses the same energy
8 source for the simultaneous or sequential
9 generation of electrical power, mechanical
10 shaft power, or both, in combination with
11 the generation of steam or other forms of
12 useful thermal energy (including heating
13 and cooling applications),

14 “(ii) which has an electrical capacity
15 of more than 50 kilowatts or a mechanical
16 energy capacity of more than 67 horse-
17 power or an equivalent combination of elec-
18 trical and mechanical energy capacities,

19 “(iii) which produces—

20 “(I) at least 20 percent of its
21 total useful energy in the form of
22 thermal energy, and

23 “(II) at least 20 percent of its
24 total useful energy in the form of elec-

1 trical or mechanical power (or com-
2 bination thereof),

3 “(iv) the energy efficiency percentage
4 of which exceeds 60 percent (70 percent in
5 the case of a system with an electrical ca-
6 pacity in excess of 50 megawatts or a me-
7 chanical energy capacity in excess of
8 67,000 horsepower, or an equivalent com-
9 bination of electrical and mechanical en-
10 ergy capacities), and

11 “(v) which is placed in service after
12 December 31, 2003, and before January 1,
13 2007.

14 “(B) SPECIAL RULES.—

15 “(i) ENERGY EFFICIENCY PERCENT-
16 AGE.—For purposes of subparagraph
17 (A)(iv), the energy efficiency percentage of
18 a system is the fraction—

19 “(I) the numerator of which is
20 the total useful electrical, thermal,
21 and mechanical power produced by
22 the system at normal operating rates,
23 and

1 “(II) the denominator of which is
2 the lower heating value of the primary
3 fuel source for the system.

4 “(ii) DETERMINATIONS MADE ON BTU
5 BASIS.—The energy efficiency percentage
6 and the percentages under subparagraph
7 (A)(iii) shall be determined on a Btu basis.

8 “(iii) INPUT AND OUTPUT PROPERTY
9 NOT INCLUDED.—The term ‘combined heat
10 and power system property’ does not in-
11 clude property used to transport the en-
12 ergy source to the facility or to distribute
13 energy produced by the facility.

14 “(iv) PUBLIC UTILITY PROPERTY.—

15 “(I) ACCOUNTING RULE FOR
16 PUBLIC UTILITY PROPERTY.—If the
17 combined heat and power system
18 property is public utility property (as
19 defined in section 168(i)(1)), the tax-
20 payer may only claim the credit under
21 the subsection if, with respect to such
22 property, the taxpayer uses a normal-
23 ization method of accounting.

24 “(II) CERTAIN EXCEPTION NOT
25 TO APPLY.—The matter in paragraph

1 (3) which follows subparagraph (D)
2 shall not apply to combined heat and
3 power system property.

4 “(C) EXTENSION OF DEPRECIATION RE-
5 COVERY PERIOD.—If a taxpayer is allowed cred-
6 it under this section for combined heat and
7 power system property and such property would
8 (but for this subparagraph) have a class life of
9 15 years or less under section 168, such prop-
10 erty shall be treated as having a 22-year class
11 life for purposes of section 168.”.

12 (c) NO CARRYBACK OF ENERGY CREDIT BEFORE
13 EFFECTIVE DATE.—Subsection (d) of section 39 is
14 amended by adding at the end the following new para-
15 graph:

16 “(12) NO CARRYBACK OF ENERGY CREDIT BE-
17 FORE EFFECTIVE DATE.—No portion of the unused
18 business credit for any taxable year which is attrib-
19 utable to the energy credit with respect to property
20 described in section 48(a)(5) may be carried back to
21 a taxable year ending before January 1, 2004.”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to property placed in service after
24 December 31, 2003, in taxable years ending after such
25 date.

1 **SEC. 41007. NEW NONREFUNDABLE PERSONAL CREDITS AL-**
2 **LOWED AGAINST REGULAR AND MINIMUM**
3 **TAXES.**

4 (a) IN GENERAL.—

5 (1) SECTION 25C.—Section 25C(b), as added
6 by section 41001, is amended by adding at the end
7 the following new paragraph:

8 “(3) LIMITATION BASED ON AMOUNT OF
9 TAX.—The credit allowed under subsection (a) for
10 the taxable year shall not exceed the excess of—

11 “(A) the sum of the regular tax liability
12 (as defined in section 26(b)) plus the tax im-
13 posed by section 55, over

14 “(B) the sum of the credits allowable
15 under this subpart (other than this section and
16 section 25D and 25E) and section 27 for the
17 taxable year.”.

18 (2) SECTION 25D.—Section 25D(b), as added
19 by section 103, is amended to read as follows:

20 “(b) LIMITATIONS.—

21 “(1) IN GENERAL.—The credit allowed under
22 subsection (a) with respect to any qualified fuel cell
23 power plant for any taxable year shall not exceed—

24 “(A) \$500 for each ½ kilowatt of capacity
25 of the power plant, reduced by

1 “(B) the aggregate energy credits allowed
2 with respect to such power plant for all prior
3 taxable years.

4 “(2) LIMITATION BASED ON AMOUNT OF
5 TAX.—The credit allowed under subsection (a) for
6 the taxable year shall not exceed the excess of—

7 “(A) the sum of the regular tax liability
8 (as defined in section 26(b)) plus the tax im-
9 posed by section 55, over

10 “(B) the sum of the credits allowable
11 under this subpart (other than this section and
12 section 25E) and section 27 for the taxable
13 year.”.

14 (3) SECTION 25E.—Section 25E(b), as added
15 by section 41004, is amended by adding at the end
16 the following new paragraph:

17 “(3) LIMITATION BASED ON AMOUNT OF
18 TAX.—The credit allowed under subsection (a) for
19 the taxable year shall not exceed the excess of—

20 “(A) the sum of the regular tax liability
21 (as defined in section 26(b)) plus the tax im-
22 posed by section 55, over

23 “(B) the sum of the credits allowable
24 under this subpart (other than this section) and
25 section 27 for the taxable year.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 23(b)(4)(B) is amended by inserting
3 “and sections 25C, 25D, and 25E” after “this sec-
4 tion”.

5 (2) Section 24(b)(3)(B) is amended by striking
6 “and 25B” and inserting “, 25B, 25C, 25D, and
7 25E”.

8 (3) Section 25(e)(1)(C) is amended by inserting
9 “25C, 25D, and 25E” after “25B,”.

10 (4) Section 25B(g)(2) is amended by striking
11 “section 23” and inserting “sections 23, 25C, 25D,
12 and 25E”.

13 (5) Section 25E(c), as added by section 41004,
14 is amended by striking “section 26(a) for such tax-
15 able year reduced by the sum of the credits allowable
16 under this subpart (other than this section)” and in-
17 serting “subsection (b)(3)”.

18 (6) Section 26(a)(1) is amended by striking
19 “and 25B” and inserting “25B, 25C, 25D, and
20 25E”.

21 (7) Section 904(h) is amended by striking “and
22 25B” and inserting “25B, 25C, 25D, and 25E”.

23 (8) Section 1400C(d) is amended by striking
24 “and 25B” and inserting “25B, 25C, 25D, and
25 25E”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2003.

4 **SEC. 41008. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE**
5 **TAXES ON RAILROADS AND INLAND WATER-**
6 **WAY TRANSPORTATION WHICH REMAIN IN**
7 **GENERAL FUND.**

8 (a) TAXES ON TRAINS.—

9 (1) IN GENERAL.—Subparagraph (A) of section
10 4041(a)(1) is amended by striking “or a diesel-pow-
11 ered train” each place it appears and by striking “or
12 train”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Subparagraph (C) of section
15 4041(a)(1) is amended by striking clause (ii)
16 and by redesignating clause (iii) as clause (ii).

17 (B) Subparagraph (C) of section
18 4041(b)(1) is amended by striking all that fol-
19 lows “section 6421(e)(2)” and inserting a pe-
20 riod.

21 (C) Subsection (d) of section 4041 is
22 amended by redesignating paragraph (3) as
23 paragraph (4) and by inserting after paragraph
24 (2) the following new paragraph:

1 “(3) DIESEL FUEL USED IN TRAINS.—There is
2 hereby imposed a tax of 0.1 cent per gallon on any
3 liquid other than gasoline (as defined in section
4 4083)—

5 “(A) sold by any person to an owner, les-
6 see, or other operator of a diesel-powered train
7 for use as a fuel in such train, or

8 “(B) used by any person as a fuel in a die-
9 sel-powered train unless there was a taxable
10 sale of such fuel under subparagraph (A).

11 No tax shall be imposed by this paragraph on the
12 sale or use of any liquid if tax was imposed on such
13 liquid under section 4081.”.

14 (D) Subsection (f) of section 4082 is
15 amended by striking “section 4041(a)(1)” and
16 inserting “subsections (d)(3) and (a)(1) of sec-
17 tion 4041, respectively”.

18 (E) Paragraph (3) of section 4083(a) is
19 amended by striking “or a diesel-powered
20 train”.

21 (F) Paragraph (3) of section 6421(f) is
22 amended to read as follows:

23 “(3) GASOLINE USED IN TRAINS.—In the case
24 of gasoline used as a fuel in a train, this section
25 shall not apply with respect to the Leaking Under-

1 ground Storage Tank Trust Fund financing rate
2 under section 4081.”.

3 (G) Paragraph (3) of section 6427(l) is
4 amended to read as follows:

5 “(3) REFUND OF CERTAIN TAXES ON FUEL
6 USED IN DIESEL-POWERED TRAINS.—For purposes
7 of this subsection, the term ‘nontaxable use’ includes
8 fuel used in a diesel-powered train. The preceding
9 sentence shall not apply to the tax imposed by sec-
10 tion 4041(d) and the Leaking Underground Storage
11 Tank Trust Fund financing rate under section 4081
12 except with respect to fuel sold for exclusive use by
13 a State or any political subdivision thereof.”.

14 (b) FUEL USED ON INLAND WATERWAYS.—

15 (1) IN GENERAL.—Paragraph (1) of section
16 4042(b) is amended by adding “and” at the end of
17 subparagraph (A), by striking “, and” at the end of
18 subparagraph (B) and inserting a period, and by
19 striking subparagraph (C).

20 (2) CONFORMING AMENDMENT.—Paragraph (2)
21 of section 4042(b) is amended by striking subpara-
22 graph (C).

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on January 1, 2004.

1 **SEC. 41009. REDUCED MOTOR FUEL EXCISE TAX ON CER-**
 2 **TAIN MIXTURES OF DIESEL FUEL.**

3 (a) IN GENERAL.—Paragraph (2) of section 4081(a)
 4 is amended by adding at the end the following:

5 “(C) DIESEL-WATER FUEL EMULSION.—In
 6 the case of diesel-water fuel emulsion at least
 7 14 percent of which is water and with respect
 8 to which the emulsion additive is registered by
 9 a United States manufacturer with the Envi-
 10 ronmental Protection Agency pursuant to sec-
 11 tion 211 of the Clean Air Act (as in effect on
 12 March 31, 2003), subparagraph (A)(iii) shall be
 13 applied by substituting ‘19.7 cents’ for ‘24.3
 14 cents’.”.

15 (b) SPECIAL RULES FOR DIESEL-WATER FUEL
 16 EMULSIONS.—

17 (1) REFUNDS FOR TAX-PAID PURCHASES.—Sec-
 18 tion 6427 is amended by redesignating subsections
 19 (m) through (p) as subsections (n) through (q), re-
 20 spectively, and by inserting after subsection (l) the
 21 following new subsection:

22 “(m) DIESEL FUEL USED TO PRODUCE EMUL-
 23 SION.—

24 “(1) IN GENERAL.—Except as provided in sub-
 25 section (k), if any diesel fuel on which tax was im-
 26 posed by section 4081 at the regular tax rate is used

1 by any person in producing an emulsion described in
 2 section 4081(a)(2)(C) which is sold or used in such
 3 person's trade or business, the Secretary shall pay
 4 (without interest) to such person an amount equal to
 5 the excess of the regular tax rate over the incentive
 6 tax rate with respect to such fuel.

7 “(2) DEFINITIONS.—For purposes of paragraph
 8 (1)—

9 “(A) REGULAR TAX RATE.—The term ‘reg-
 10 ular tax rate’ means the aggregate rate of tax
 11 imposed by section 4081 determined without re-
 12 gard to section 4081(a)(2)(C).

13 “(B) INCENTIVE TAX RATE.—The term
 14 ‘incentive tax rate’ means the aggregate rate of
 15 tax imposed by section 4081 determined with
 16 regard to section 4081(a)(2)(C).”.

17 (2) LATER SEPARATION OF FUEL.—

18 (A) IN GENERAL.—Section 4081 (relating
 19 to imposition of tax) is amended by redesign-
 20 ating subsections (d) and (e) as subsections
 21 (e) and (f), respectively, and by inserting after
 22 subsection (c) the following new subsection:

23 “(d) LATER SEPARATION OF FUEL FROM DIESEL-
 24 WATER FUEL EMULSION.—If any person separates the
 25 taxable fuel from a diesel-water fuel emulsion on which

1 tax was imposed under subsection (a) at a rate determined
 2 under subsection (a)(2)(C) (or with respect to which a
 3 credit or payment was allowed or made by reason of sec-
 4 tion 6427), such person shall be treated as the refiner of
 5 such taxable fuel. The amount of tax imposed on any re-
 6 moval of such fuel by such person shall be reduced by the
 7 amount of tax imposed (and not credited or refunded) on
 8 any prior removal or entry of such fuel.”.

9 (B) CONFORMING AMENDMENT.—Sub-
 10 section (d) of section 6416 is amended by strik-
 11 ing “section 4081(e)” and inserting “section
 12 4081(f)”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall take effect on October 1, 2003.

15 **SEC. 41010. REPEAL OF PHASEOUTS FOR QUALIFIED ELEC-**
 16 **TRIC VEHICLE CREDIT AND DEDUCTION FOR**
 17 **CLEAN FUEL-VEHICLES.**

18 (a) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—
 19 Subsection (b) of section 30 (relating to limitations) is
 20 amended by striking paragraph (2) and redesignating
 21 paragraph (3) as paragraph (2).

22 (b) DEDUCTION FOR CLEAN-FUEL VEHICLES AND
 23 CERTAIN REFUELING PROPERTY.—Paragraph (1) of sec-
 24 tion 179A(b) (relating to qualified clean-fuel vehicle prop-
 25 erty) is amended to read as follows:

1 “(1) QUALIFIED CLEAN-FUEL VEHICLE PROP-
 2 PERTY.— The cost which may be taken into account
 3 under subsection (a)(1)(A) with respect to any
 4 motor vehicle shall not exceed—

5 “(A) in the case of a motor vehicle not de-
 6 scribed in subparagraph (B) or (C), \$2,000,

7 “(B) in the case of any truck or van with
 8 a gross vehicle weight rating greater than
 9 10,000 pounds but not greater than 26,000
 10 pounds, \$5,000, or

11 “(C) \$50,000 in the case of—

12 “(i) a truck or van with a gross vehi-
 13 cle weight rating greater than 26,000
 14 pounds, or

15 “(ii) any bus which has a seating ca-
 16 pacity of at least 20 adults (not including
 17 the driver).”.

18 **SEC. 41011. ALTERNATIVE MOTOR VEHICLE CREDIT.**

19 (a) IN GENERAL.—Subpart B of part IV of sub-
 20 chapter A of chapter 1 (relating to foreign tax credit, etc.)
 21 is amended by adding at the end the following:

22 **“SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.**

23 “(a) ALLOWANCE OF CREDIT.—There shall be al-
 24 lowed as a credit against the tax imposed by this chapter
 25 for the taxable year an amount equal to the sum of—

1 “(1) the new qualified fuel cell motor vehicle
2 credit determined under subsection (b), and

3 “(2) the advanced lean burn technology motor
4 vehicle credit determined under subsection (c).

5 “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE
6 CREDIT.—

7 “(1) IN GENERAL.—For purposes of subsection
8 (a), the new qualified fuel cell motor vehicle credit
9 determined under this subsection with respect to a
10 new qualified fuel cell motor vehicle placed in service
11 by the taxpayer during the taxable year is—

12 “(A) \$4,000, if such vehicle has a gross ve-
13 hicle weight rating of not more than 8,500
14 pounds,

15 “(B) \$10,000, if such vehicle has a gross
16 vehicle weight rating of more than 8,500
17 pounds but not more than 14,000 pounds,

18 “(C) \$20,000, if such vehicle has a gross
19 vehicle weight rating of more than 14,000
20 pounds but not more than 26,000 pounds, and

21 “(D) \$40,000, if such vehicle has a gross
22 vehicle weight rating of more than 26,000
23 pounds.

24 “(2) INCREASE FOR FUEL EFFICIENCY.—

1 “(A) IN GENERAL.—The amount deter-
2 mined under paragraph (1)(A) with respect to
3 a new qualified fuel cell motor vehicle which is
4 a passenger automobile or light truck shall be
5 increased by—

6 “(i) \$1,000, if such vehicle achieves at
7 least 150 percent but less than 175 per-
8 cent of the 2000 model year city fuel econ-
9 omy,

10 “(ii) \$1,500, if such vehicle achieves
11 at least 175 percent but less than 200 per-
12 cent of the 2000 model year city fuel econ-
13 omy,

14 “(iii) \$2,000, if such vehicle achieves
15 at least 200 percent but less than 225 per-
16 cent of the 2000 model year city fuel econ-
17 omy,

18 “(iv) \$2,500, if such vehicle achieves
19 at least 225 percent but less than 250 per-
20 cent of the 2000 model year city fuel econ-
21 omy,

22 “(v) \$3,000, if such vehicle achieves
23 at least 250 percent but less than 275 per-
24 cent of the 2000 model year city fuel econ-
25 omy,

1 “(vi) \$3,500, if such vehicle achieves
 2 at least 275 percent but less than 300 per-
 3 cent of the 2000 model year city fuel econ-
 4 omy, and

5 “(vii) \$4,000, if such vehicle achieves
 6 at least 300 percent of the 2000 model
 7 year city fuel economy.

8 “(B) 2000 MODEL YEAR CITY FUEL ECON-
 9 OMY.—For purposes of subparagraph (A), the
 10 2000 model year city fuel economy with respect
 11 to a vehicle shall be determined in accordance
 12 with the following tables:

13 “(i) In the case of a passenger auto-
 14 mobile:

“If vehicle inertia weight The 2000 model year city fuel	
class is: economy is:	
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 or 8,500 lbs	11.1 mpg.

15 “(ii) In the case of a light truck:

“If vehicle inertia weight The 2000 model year city fuel	
class is: economy is:	
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg

“If vehicle inertia weight The 2000 model year city fuel class is: economy is:	
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 or 8,500 lbs	12.0 mpg.

1 “(C) VEHICLE INERTIA WEIGHT CLASS.—

2 For purposes of subparagraph (B), the term
3 ‘vehicle inertia weight class’ has the same
4 meaning as when defined in regulations pre-
5 scribed by the Administrator of the Environ-
6 mental Protection Agency for purposes of the
7 administration of title II of the Clean Air Act
8 (42 U.S.C. 7521 et seq.).

9 “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-
10 CLE.—For purposes of this subsection, the term
11 ‘new qualified fuel cell motor vehicle’ means a motor
12 vehicle—

13 “(A) which is propelled by power derived
14 from one or more cells which convert chemical
15 energy directly into electricity by combining ox-
16 ygen with hydrogen fuel which is stored on
17 board the vehicle in any form and may or may
18 not require reformation prior to use,

19 “(B) which, in the case of a passenger
20 automobile or light truck—

1 “(i) for 2004 and later model vehicles,
2 has received a certificate of conformity
3 under the Clean Air Act and meets or ex-
4 ceeds the equivalent qualifying California
5 low emission vehicle standard under sec-
6 tion 243(e)(2) of the Clean Air Act for
7 that make and model year, and

8 “(ii) for 2004 and later model vehi-
9 cles, has received a certificate that such ve-
10 hicle meets or exceeds the Bin 5 Tier II
11 emission level established in regulations
12 prescribed by the Administrator of the En-
13 vironmental Protection Agency under sec-
14 tion 202(i) of the Clean Air Act for that
15 make and model year vehicle,

16 “(C) the original use of which commences
17 with the taxpayer,

18 “(D) which is acquired for use or lease by
19 the taxpayer and not for resale, and

20 “(E) which is made by a manufacturer.

21 “(c) ADVANCED LEAN BURN TECHNOLOGY MOTOR
22 VEHICLE CREDIT.—

23 “(1) IN GENERAL.—For purposes of subsection
24 (a), the advanced lean burn technology motor vehicle
25 credit determined under this subsection with respect

1 to a new qualified advanced lean burn technology
2 motor vehicle placed in service by the taxpayer dur-
3 ing the taxable year is the credit amount determined
4 under paragraph (2).

5 “(2) CREDIT AMOUNT.—

6 “(A) INCREASE FOR FUEL EFFICIENCY.—

7 The credit amount determined under this para-
8 graph shall be—

9 “(i) \$500, if such vehicle achieves at
10 least 125 percent but less than 150 per-
11 cent of the 2000 model year city fuel econ-
12 omy,

13 “(ii) \$1,000, if such vehicle achieves
14 at least 150 percent but less than 175 per-
15 cent of the 2000 model year city fuel econ-
16 omy,

17 “(iii) \$1,500, if such vehicle achieves
18 at least 175 percent but less than 200 per-
19 cent of the 2000 model year city fuel econ-
20 omy,

21 “(iv) \$2,000, if such vehicle achieves
22 at least 200 percent but less than 225 per-
23 cent of the 2000 model year city fuel econ-
24 omy,

1 “(v) \$2,500, if such vehicle achieves
2 at least 225 percent but less than 250 per-
3 cent of the 2000 model year city fuel econ-
4 omy, and

5 “(vi) \$3,000, if such vehicle achieves
6 at least 250 percent of the 2000 model
7 year city fuel economy.

8 For purposes of clause (i), the 2000 model year
9 city fuel economy with respect to a vehicle shall
10 be determined using the tables provided in sub-
11 section (b)(2)(B) with respect to such vehicle.

12 “(B) CONSERVATION CREDIT.—The
13 amount determined under subparagraph (A)
14 with respect to an advanced lean burn tech-
15 nology motor vehicle shall be increased by—

16 “(i) \$250, if such vehicle achieves a
17 lifetime fuel savings of at least 1,500 gal-
18 lons of gasoline, and

19 “(ii) \$500, if such vehicle achieves a
20 lifetime fuel savings of at least 2,500 gal-
21 lons of gasoline.

22 “(C) OPTION TO USE LIKE VEHICLE.—At
23 the option of the vehicle manufacturer, the in-
24 crease for fuel efficiency and conservation credit
25 may be calculated by comparing the new ad-

1 vanded lean-burn technology motor vehicle to a
2 like vehicle.

3 “(3) DEFINITIONS.—For purposes of this sub-
4 section—

5 “(A) ADVANCED LEAN BURN TECHNOLOGY
6 MOTOR VEHICLE.—The term ‘advanced lean
7 burn technology motor vehicle’ means a motor
8 vehicle with an internal combustion engine
9 that—

10 “(i) is designed to operate primarily
11 using more air than is necessary for com-
12 plete combustion of the fuel,

13 “(ii) incorporates direct injection,

14 “(iii) achieves at least 125 percent of
15 the 2000 model year city fuel economy,
16 and

17 “(iv) for 2004 and later model vehi-
18 cles, has received a certificate that such ve-
19 hicle meets or exceeds the Bin 8 Tier II
20 emission level established in regulations
21 prescribed by the Administrator of the En-
22 vironmental Protection Agency under sec-
23 tion 202(i) of the Clean Air Act for that
24 make and model year vehicle.

1 “(B) LIKE VEHICLE.—The term ‘like vehi-
2 cle’ for an advanced lean burn technology motor
3 vehicle derived from a conventional production
4 vehicle produced in the same model year means
5 a model that is equivalent in the following
6 areas:

7 “(i) Body style (2-door or 4-door).

8 “(ii) Transmission (automatic or man-
9 ual).

10 “(iii) Acceleration performance (\pm
11 0.05 seconds).

12 “(iv) Drivetrain (2-wheel drive or 4-
13 wheel drive).

14 “(v) Certification by the Adminis-
15 trator of the Environmental Protection
16 Agency.

17 “(C) LIFETIME FUEL SAVINGS.—The term
18 ‘lifetime fuel savings’ shall be calculated by di-
19 viding 120,000 by the difference between the
20 2000 model year city fuel economy for the vehi-
21 cle inertia weight class and the city fuel econ-
22 omy for the new qualified hybrid motor vehicle.

23 “(d) LIMITATION BASED ON AMOUNT OF TAX.—The
24 credit allowed under subsection (a) for the taxable year
25 shall not exceed the excess of—

1 “(1) the sum of the regular tax liability (as de-
2 fined in section 26(b)) plus the tax imposed by sec-
3 tion 55, over

4 “(2) the sum of the credits allowable under sub-
5 part A and sections 27, 29, and 30A for the taxable
6 year.

7 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—
8 For purposes of this section—

9 “(1) CONSUMABLE FUEL.—The term
10 ‘consumable fuel’ means any solid, liquid, or gaseous
11 matter which releases energy when consumed by an
12 auxiliary power unit.

13 “(2) MOTOR VEHICLE.—The term ‘motor vehi-
14 cle’ has the meaning given such term by section
15 30(c)(2).

16 “(3) 2000 MODEL YEAR CITY FUEL ECON-
17 OMY.—The 2000 model year city fuel economy with
18 respect to any vehicle shall be measured under rules
19 similar to the rules under section 4064(c).

20 “(4) OTHER TERMS.—The terms ‘automobile’,
21 ‘passenger automobile’, ‘light truck’, and ‘manufac-
22 turer’ have the meanings given such terms in regula-
23 tions prescribed by the Administrator of the Envi-
24 ronmental Protection Agency for purposes of the ad-

1 ministration of title II of the Clean Air Act (42
2 U.S.C. 7521 et seq.).

3 “(5) REDUCTION IN BASIS.—For purposes of
4 this subtitle, if a credit is allowed under this section
5 for any expenditure with respect to any property, the
6 increase in the basis of such property which would
7 (but for this paragraph) result from such expendi-
8 ture shall be reduced by the amount of the credit so
9 allowed.

10 “(6) NO DOUBLE BENEFIT.—The amount of
11 any deduction or credit allowable under this chapter
12 (other than the credit allowable under this section),
13 with respect to a vehicle described under subsection
14 (b), shall be reduced by the amount of credit allowed
15 under subsection (a) for such vehicle for the taxable
16 year.

17 “(7) PROPERTY USED BY TAX-EXEMPT ENTI-
18 TIES.—In the case of a credit amount which is al-
19 lowable with respect to a motor vehicle which is ac-
20 quired by an entity exempt from tax under this
21 chapter, the person which sells or leases such vehicle
22 to the entity shall be treated as the taxpayer with
23 respect to the vehicle for purposes of this section
24 and the credit shall be allowed to such person, but
25 only if the person clearly discloses to the entity in

1 any sale or lease document the specific amount of
2 any credit otherwise allowable to the entity under
3 this section.

4 “(8) RECAPTURE.—The Secretary shall, by reg-
5 ulations, provide for recapturing the benefit of any
6 credit allowable under subsection (a) with respect to
7 any property which ceases to be property eligible for
8 such credit (including recapture in the case of a
9 lease period of less than the economic life of a vehi-
10 cle).

11 “(9) PROPERTY USED OUTSIDE UNITED
12 STATES, ETC., NOT QUALIFIED.—No credit shall be
13 allowed under subsection (a) with respect to any
14 property referred to in section 50(b) or with respect
15 to the portion of the cost of any property taken into
16 account under section 179.

17 “(10) ELECTION TO NOT TAKE CREDIT.—No
18 credit shall be allowed under subsection (a) for any
19 vehicle if the taxpayer elects to not have this section
20 apply to such vehicle.

21 “(11) CARRYFORWARD ALLOWED.—

22 “(A) IN GENERAL.—If the credit amount
23 allowable under subsection (a) for a taxable
24 year exceeds the amount of the limitation under
25 subsection (d) for such taxable year (referred to

1 as the ‘unused credit year’ in this paragraph),
2 such excess shall be allowed as a credit
3 carryforward for each of the 20 taxable years
4 following the unused credit year.

5 “(B) RULES.—Rules similar to the rules of
6 section 39 shall apply with respect to the credit
7 carryforward under subparagraph (A).

8 “(12) INTERACTION WITH AIR QUALITY AND
9 MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-
10 erwise provided in this section, a motor vehicle shall
11 not be considered eligible for a credit under this sec-
12 tion unless such vehicle is in compliance with—

13 “(A) the applicable provisions of the Clean
14 Air Act for the applicable make and model year
15 of the vehicle (or applicable air quality provi-
16 sions of State law in the case of a State which
17 has adopted such provision under a waiver
18 under section 209(b) of the Clean Air Act), and

19 “(B) the motor vehicle safety provisions of
20 sections 30101 through 30169 of title 49,
21 United States Code.

22 “(f) REGULATIONS.—

23 “(1) IN GENERAL.—The Secretary shall pro-
24 mulgate such regulations as necessary to carry out
25 the provisions of this section.

1 “(2) DETERMINATION OF MOTOR VEHICLE ELI-
2 GIBILITY.—The Secretary, in coordination with the
3 Secretary of Transportation and the Administrator
4 of the Environmental Protection Agency, shall pre-
5 scribe such regulations as necessary to determine
6 whether a motor vehicle meets the requirements to
7 be eligible for a credit under this section.

8 “(g) TERMINATION.—This section shall not apply to
9 any property placed in service after—

10 “(1) in the case of a new qualified fuel cell
11 motor vehicle (as described in subsection (b)), De-
12 cember 31, 2012, and

13 “(2) in the case of any other property, Decem-
14 ber 31, 2006.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 1016(a) is amended by striking
17 “and” at the end of paragraph (30), by striking the
18 period at the end of paragraph (31) and inserting “,
19 and”, and by adding at the end the following:

20 “(32) to the extent provided in section
21 30B(e)(5).”.

22 (2) Section 6501(m) is amended by inserting
23 “30B(e)(10),” after “30(d)(4),”.

24 (3) The table of sections for subpart B of part
25 IV of subchapter A of chapter 1 is amended by in-

1 serting after the item relating to section 30A the fol-
 2 lowing:

“Sec. 30B. Alternative motor vehicle credit.”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to property placed in service after
 5 December 31, 2003, in taxable years ending after such
 6 date.

7 **TITLE II—RELIABILITY**

8 **SEC. 42001. NATURAL GAS GATHERING LINES TREATED AS** 9 **7-YEAR PROPERTY.**

10 (a) IN GENERAL.—Subparagraph (C) of section
 11 168(e)(3) (relating to classification of certain property) is
 12 amended by striking “and” at the end of clause (i), by
 13 redesignating clause (ii) as clause (iii), and by inserting
 14 after clause (i) the following new clause:

15 “(ii) any natural gas gathering line,
 16 and”.

17 (b) NATURAL GAS GATHERING LINE.—Subsection (i)
 18 of section 168 is amended by adding after paragraph (15)
 19 the following new paragraph:

20 “(16) NATURAL GAS GATHERING LINE.—The
 21 term ‘natural gas gathering line’ means—

22 “(A) the pipe, equipment, and appur-
 23 tenances determined to be a gathering line by
 24 the Federal Energy Regulatory Commission, or

1 “(B) the pipe, equipment, and appur-
 2 tenances used to deliver natural gas from the
 3 wellhead or a commonpoint to the point at
 4 which such gas first reaches—

5 “(i) a gas processing plant,

6 “(ii) an interconnection with a trans-
 7 mission pipeline certificated by the Federal
 8 Energy Regulatory Commission as an
 9 interstate transmission pipeline,

10 “(iii) an interconnection with an
 11 intrastate transmission pipeline, or

12 “(iv) a direct interconnection with a
 13 local distribution company, a gas storage
 14 facility, or an industrial consumer.”.

15 (c) ALTERNATIVE SYSTEM.—The table contained in
 16 section 168(g)(3)(B) is amended by inserting after the
 17 item relating to subparagraph (C)(i) the following:

 “(C)(ii) 10”.

18 (d) ALTERNATIVE MINIMUM TAX EXCEPTION.—Sub-
 19 paragraph (B) of section 56(a)(1) is amended by inserting
 20 before the period the following: “, or in section
 21 168(e)(3)(C)(ii)”.

22 (e) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to property placed in service after
 24 the date of the enactment of this Act, in taxable years
 25 ending after such date.

1 **SEC. 42002. NATURAL GAS DISTRIBUTION LINES TREATED**
 2 **AS 15-YEAR PROPERTY.**

3 (a) IN GENERAL.—Subparagraph (E) of section
 4 168(e)(3) (relating to classification of certain property) is
 5 amended by striking “and” at the end of clause (ii), by
 6 striking the period at the end of clause (iii) and by insert-
 7 ing “, and”, and by adding at the end the following new
 8 clause:

9 “(iv) any natural gas distribution
 10 line.”.

11 (b) ALTERNATIVE SYSTEM.—The table contained in
 12 section 168(g)(3)(B) is amended by inserting after the
 13 item relating to subparagraph (E)(iii) the following:

“(E)(iv) 20”.

14 (c) ALTERNATIVE MINIMUM TAX EXCEPTION.—Sub-
 15 paragraph (B) of section 56(a)(1) is amended by inserting
 16 before the period the following: “, or in section
 17 168(e)(3)(E)(iv)”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to property placed in service after
 20 the date of the enactment of this Act, in taxable years
 21 ending after such date.

22 **SEC. 42003. ELECTRIC TRANSMISSION PROPERTY TREATED**
 23 **AS 15-YEAR PROPERTY.**

24 (a) IN GENERAL.—Subparagraph (E) of section
 25 168(e)(3) (relating to classification of certain property) is

1 amended by striking “and” at the end of clause (iii), by
 2 striking the period at the end of clause (iv) and by insert-
 3 ing “, and”, and by adding at the end the following new
 4 clause:

5 “(v) any section 1245 property (as de-
 6 fined in section 1245(a)(3)) used in the
 7 transmission at 69 or more kilovolts of
 8 electricity for sale.”.

9 (b) ALTERNATIVE SYSTEM.—The table contained in
 10 section 168(g)(3)(B) is amended by inserting after the
 11 item relating to subparagraph (E)(iv) the following:

“(E)(v) 20”.

12 (c) ALTERNATIVE MINIMUM TAX EXCEPTION.—Sub-
 13 paragraph (B) of section 56(a)(1) is amended by inserting
 14 before the period the following: “, or in section
 15 168(e)(3)(E)(v)”.

16 (d) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to property placed in service after
 18 the date of the enactment of this Act, in taxable years
 19 ending after such date.

20 **SEC. 42004. EXPENSING OF CAPITAL COSTS INCURRED IN**
 21 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
 22 **TION AGENCY SULFUR REGULATIONS.**

23 (a) IN GENERAL.—Part VI of subchapter B of chap-
 24 ter 1 (relating to itemized deductions for individuals and

1 corporations) is amended by inserting after section 179A
2 the following new section:

3 **“SEC. 179B. DEDUCTION FOR CAPITAL COSTS INCURRED IN**
4 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
5 **TION AGENCY SULFUR REGULATIONS.**

6 “(a) TREATMENT AS EXPENSES.—A small business
7 refiner (as defined in section 45H(c)(1)) may elect to treat
8 75 percent of qualified capital costs (as defined in section
9 45H(c)(2)) which are paid or incurred by the taxpayer
10 during the taxable year as expenses which are not charge-
11 able to capital account. Any cost so treated shall be al-
12 lowed as a deduction for the taxable year in which paid
13 or incurred.

14 “(b) REDUCED PERCENTAGE.—In the case of a small
15 business refiner with average daily domestic refinery runs
16 for the 1-year period ending on March 31, 2003, in excess
17 of 155,000 barrels, the number of percentage points de-
18 scribed in subsection (a) shall be reduced (not below zero)
19 by the product of such number (before the application of
20 this subsection) and the ratio of such excess to 50,000
21 barrels.

22 “(c) BASIS REDUCTION.—

23 “(1) IN GENERAL.—For purposes of this title,
24 the basis of any property shall be reduced by the

1 portion of the cost of such property taken into ac-
2 count under subsection (a).

3 “(2) ORDINARY INCOME RECAPTURE.—For
4 purposes of section 1245, the amount of the deduc-
5 tion allowable under subsection (a) with respect to
6 any property which is of a character subject to the
7 allowance for depreciation shall be treated as a de-
8 duction allowed for depreciation under section 167.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Section 263(a)(1) is amended by striking
11 “or” at the end of subparagraph (G), by striking the
12 period at the end of subparagraph (H) and inserting
13 “; or”, and by adding at the end the following new
14 subparagraph:

15 “(I) expenditures for which a deduction is
16 allowed under section 179B.”.

17 (2) Section 312(k)(3)(B) is amended—

18 (A) by striking “section 179 or 179A”
19 each place it appears and inserting “section
20 179, 179A, or 179B”, and

21 (B) in the heading, by striking “179 OR
22 179A” and inserting “179, 179A, OR 179B”.

23 (3) Section 1016(a) is amended by striking
24 “and” at the end of paragraph (31), by striking the
25 period at the end of paragraph (32) and inserting “,

1 and”, and by adding at the end the following new
 2 paragraph:

3 “(33) to the extent provided in section
 4 179B(c).”

5 (4) Paragraphs (2)(C) and (3)(C) of section
 6 1245(a) are each amended by inserting “179B,”
 7 after “179A,”.

8 (5) The table of sections for part VI of sub-
 9 chapter B of chapter 1 is amended by inserting after
 10 the item relating to section 179A the following new
 11 item:

“Sec. 179B. Deduction for capital costs incurred in complying
 with Environmental Protection Agency sulfur regu-
 lations.”.

12 (c) EFFECTIVE DATE.—The amendment made by
 13 this section shall apply to expenses paid or incurred after
 14 March 31, 2003, in taxable years ending after such date.

15 **SEC. 42005. CREDIT FOR PRODUCTION OF LOW SULFUR**
 16 **DIESEL FUEL.**

17 (a) IN GENERAL.—Subpart D of part IV of sub-
 18 chapter A of chapter 1 (relating to business-related cred-
 19 its) is amended by adding at the end the following new
 20 section:

21 **“SEC. 45H. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
 22 **SEL FUEL.**

23 “(a) IN GENERAL.—For purposes of section 38, the
 24 amount of the low sulfur diesel fuel production credit de-

1 terminated under this section with respect to any facility
2 of a small business refiner is an amount equal to 5 cents
3 for each gallon of low sulfur diesel fuel produced during
4 the taxable year by such small business refiner at such
5 facility.

6 “(b) MAXIMUM CREDIT.—

7 “(1) IN GENERAL.—The aggregate credit deter-
8 mined under subsection (a) for any taxable year with
9 respect to any facility shall not exceed—

10 “(A) 25 percent of the qualified capital
11 costs incurred by the small business refiner
12 with respect to such facility, reduced by

13 “(B) the aggregate credits determined
14 under this section for all prior taxable years
15 with respect to such facility.

16 “(2) REDUCED PERCENTAGE.—In the case of a
17 small business refiner with average daily domestic
18 refinery runs for the 1-year period ending on March
19 31, 2003, in excess of 155,000 barrels, the number
20 of percentage points described in paragraph (1) shall
21 be reduced (not below zero) by the product of such
22 number (before the application of this paragraph)
23 and the ratio of such excess to 50,000 barrels.

24 “(c) DEFINITIONS.—For purposes of this section—

1 “(1) SMALL BUSINESS REFINER.—The term
2 ‘small business refiner’ means, with respect to any
3 taxable year, a refiner of crude oil with respect to
4 which not more than 1,500 persons are engaged in
5 the refinery operations of the business on any day
6 during such taxable year and whose average daily
7 domestic refinery run for the 1-year period ending
8 on March 31, 2003, did not exceed 205,000 barrels.

9 “(2) QUALIFIED CAPITAL COSTS.—The term
10 ‘qualified capital costs’ means, with respect to any
11 facility, those costs paid or incurred during the ap-
12 plicable period for compliance with the applicable
13 EPA regulations with respect to such facility, includ-
14 ing expenditures for the construction of new process
15 operation units or the dismantling and reconstruc-
16 tion of existing process units to be used in the pro-
17 duction of low sulfur diesel fuel, associated adjacent
18 or offsite equipment (including tankage, catalyst,
19 and power supply), engineering, construction period
20 interest, and sitework.

21 “(3) APPLICABLE EPA REGULATIONS.—The
22 term ‘applicable EPA regulations’ means the High-
23 way Diesel Fuel Sulfur Control Requirements of the
24 Environmental Protection Agency.

1 “(4) APPLICABLE PERIOD.—The term ‘applica-
2 ble period’ means, with respect to any facility, the
3 period beginning on April 1, 2003, and ending with
4 the date which is 1 year after the date on which the
5 taxpayer must comply with the applicable EPA regu-
6 lations with respect to such facility.

7 “(5) LOW SULFUR DIESEL FUEL.—The term
8 ‘low sulfur diesel fuel’ means diesel fuel with a sul-
9 fur content of 15 parts per million or less.

10 “(d) REDUCTION IN BASIS.—For purposes of this
11 subtitle, if a credit is determined under this section for
12 any expenditure with respect to any property, the increase
13 in basis of such property which would (but for this sub-
14 section) result from such expenditure shall be reduced by
15 the amount of the credit so determined.

16 “(e) CERTIFICATION.—

17 “(1) REQUIRED.—Not later than the date
18 which is 30 months after the first day of the first
19 taxable year in which the low sulfur diesel fuel pro-
20 duction credit is allowed with respect to a facility,
21 the small business refiner must obtain certification
22 from the Secretary, in consultation with the Admin-
23 istrator of the Environmental Protection Agency,
24 that the taxpayer’s qualified capital costs with re-

1 spect to such facility will result in compliance with
2 the applicable EPA regulations.

3 “(2) CONTENTS OF APPLICATION.—An applica-
4 tion for certification shall include relevant informa-
5 tion regarding unit capacities and operating charac-
6 teristics sufficient for the Secretary, in consultation
7 with the Administrator of the Environmental Protec-
8 tion Agency, to determine that such qualified capital
9 costs are necessary for compliance with the applica-
10 ble EPA regulations.

11 “(3) REVIEW PERIOD.—Any application shall
12 be reviewed and notice of certification, if applicable,
13 shall be made within 60 days of receipt of such ap-
14 plication.

15 “(4) STATUTE OF LIMITATIONS.—With respect
16 to the credit allowed under this section—

17 “(A) the statutory period for the assess-
18 ment of any deficiency attributable to such
19 credit shall not expire before the end of the 3-
20 year period ending on the date that the review
21 period described in paragraph (3) ends, and

22 “(B) such deficiency may be assessed be-
23 fore the expiration of such 3-year period not-
24 withstanding the provisions of any other law or

1 rule of law which would otherwise prevent such
2 assessment.

3 “(f) CONTROLLED GROUPS.—For purposes of this
4 section, all persons treated as a single employer under sub-
5 section (b), (c), (m), or (o) of section 414 shall be treated
6 as 1 taxpayer.”.

7 (b) CREDIT MADE PART OF GENERAL BUSINESS
8 CREDIT.—Subsection (b) of section 38 (relating to general
9 business credit) is amended by striking “plus” at the end
10 of paragraph (15), by striking the period at the end of
11 paragraph (16) and inserting “, plus”, and by adding at
12 the end the following new paragraph:

13 “(17) in the case of a small business refiner,
14 the low sulfur diesel fuel production credit deter-
15 mined under section 45H(a).”.

16 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C
17 (relating to certain expenses for which credits are allow-
18 able) is amended by adding after subsection (d) the fol-
19 lowing new subsection:

20 “(e) LOW SULFUR DIESEL FUEL PRODUCTION
21 CREDIT.—No deduction shall be allowed for that portion
22 of the expenses otherwise allowable as a deduction for the
23 taxable year which is equal to the amount of the credit
24 determined for the taxable year under section 45H(a).”.

1 (d) BASIS ADJUSTMENT.—Section 1016(a) (relating
 2 to adjustments to basis) is amended by striking “and” at
 3 the end of paragraph (32), by striking the period at the
 4 end of paragraph (33) and inserting “, and”, and by add-
 5 ing at the end the following new paragraph:

6 “(34) in the case of a facility with respect to
 7 which a credit was allowed under section 45H, to
 8 the extent provided in section 45H(d).”.

9 (e) CLERICAL AMENDMENT.—The table of sections
 10 for subpart D of part IV of subchapter A of chapter 1
 11 is amended by adding at the end the following new item:

“Sec. 45H. Credit for production of low sulfur diesel fuel.”.

12 (f) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to expenses paid or incurred after
 14 March 31, 2003, in taxable years ending after such date.

15 **SEC. 42006. DETERMINATION OF SMALL REFINER EXCEP-**
 16 **TION TO OIL DEPLETION DEDUCTION.**

17 (a) IN GENERAL.—Paragraph (4) of section 613A(d)
 18 (relating to certain refiners excluded) is amended to read
 19 as follows:

20 “(4) CERTAIN REFINERS EXCLUDED.—If the
 21 taxpayer or a related person engages in the refining
 22 of crude oil, subsection (c) shall not apply to the
 23 taxpayer for a taxable year if the average daily refin-
 24 ery runs of the taxpayer and the related person for
 25 the taxable year exceed 75,000 barrels. For purposes

1 of this paragraph, the average daily refinery runs for
 2 any taxable year shall be determined by dividing the
 3 aggregate refinery runs for the taxable year by the
 4 number of days in the taxable year.”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 2003.

8 **SEC. 42007. SALES OR DISPOSITIONS TO IMPLEMENT FED-**
 9 **ERAL ENERGY REGULATORY COMMISSION**
 10 **OR STATE ELECTRIC RESTRUCTURING POL-**
 11 **ICY.**

12 (a) IN GENERAL.—Section 451 (relating to general
 13 rule for taxable year of inclusion) is amended by adding
 14 at the end the following new subsection:

15 “(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO
 16 IMPLEMENT FEDERAL ENERGY REGULATORY COMMIS-
 17 SION OR STATE ELECTRIC RESTRUCTURING POLICY.—

18 “(1) IN GENERAL.—In the case of any quali-
 19 fying electric transmission transaction to which the
 20 taxpayer elects the application of this section, quali-
 21 fied gain from such transaction shall be recog-
 22 nized—

23 “(A) in the taxable year which includes the
 24 date of such transaction to the extent the

1 amount realized from such transaction ex-
2 ceeds—

3 “(i) the cost of exempt utility property
4 which is purchased by the taxpayer during
5 the 4-year period beginning on such date,
6 reduced (but not below zero) by

7 “(ii) any portion of such cost pre-
8 viously taken into account under this sub-
9 section, and

10 “(B) ratably over the 8-taxable year period
11 beginning with the taxable year which includes
12 the date of such transaction, in the case of any
13 such gain not recognized under subparagraph
14 (A).

15 “(2) QUALIFIED GAIN.—For purposes of this
16 subsection, the term ‘qualified gain’ means, with re-
17 spect to any qualifying electric transmission trans-
18 action in any taxable year—

19 “(A) any ordinary income derived from
20 such transaction which would be required to be
21 recognized under section 1245 or 1250 for such
22 taxable year (determined without regard to this
23 subsection), and

24 “(B) any income derived from such trans-
25 action in excess of the amount described in sub-

1 paragraph (A) which is required to be included
2 in gross income for such taxable year (deter-
3 mined without regard to this subsection).

4 “(3) QUALIFYING ELECTRIC TRANSMISSION
5 TRANSACTION.—For purposes of this subsection, the
6 term ‘qualifying electric transmission transaction’
7 means any sale or other disposition before January
8 1, 2007, of—

9 “(A) property used in the trade or business
10 of providing electric transmission services, or

11 “(B) any stock or partnership interest in a
12 corporation or partnership, as the case may be,
13 whose principal trade or business consists of
14 providing electric transmission services,

15 but only if such sale or disposition is to an inde-
16 pendent transmission company.

17 “(4) INDEPENDENT TRANSMISSION COM-
18 PANY.—For purposes of this subsection, the term
19 ‘independent transmission company’ means—

20 “(A) an independent transmission provider
21 approved by the Federal Energy Regulatory
22 Commission,

23 “(B) a person—

24 “(i) who the Federal Energy Regu-
25 latory Commission determines in its au-

1 thorization of the transaction under section
2 203 of the Federal Power Act (16 U.S.C.
3 824b) or by declaratory order is not a
4 market participant within the meaning of
5 such Commission’s rules applicable to inde-
6 pendent transmission providers, and

7 “(ii) whose transmission facilities to
8 which the election under this subsection
9 applies are under the operational control of
10 a Federal Energy Regulatory Commission-
11 approved independent transmission pro-
12 vider before the close of the period speci-
13 fied in such authorization, but not later
14 than the close of the period applicable
15 under subsection (a)(2)(B) as extended
16 under paragraph (2), or

17 “(C) in the case of facilities subject to the
18 jurisdiction of the Public Utility Commission of
19 Texas—

20 “(i) a person which is approved by
21 that Commission as consistent with Texas
22 State law regarding an independent trans-
23 mission provider, or

24 “(ii) a political subdivision or affiliate
25 thereof whose transmission facilities are

1 under the operational control of a person
2 described in clause (i).

3 “(5) EXEMPT UTILITY PROPERTY.—For pur-
4 poses of this subsection—

5 “(A) IN GENERAL.—The term ‘exempt
6 utility property’ means property used in the
7 trade or business of—

8 “(i) generating, transmitting, distrib-
9 uting, or selling electricity, or

10 “(ii) producing, transmitting, distrib-
11 uting, or selling natural gas.

12 “(B) NONRECOGNITION OF GAIN BY REA-
13 SON OF ACQUISITION OF STOCK.—Acquisition of
14 control of a corporation shall be taken into ac-
15 count under this subsection with respect to a
16 qualifying electric transmission transaction only
17 if the principal trade or business of such cor-
18 poration is a trade or business referred to in
19 subparagraph (A).

20 “(6) SPECIAL RULE FOR CONSOLIDATED
21 GROUPS.—In the case of a corporation which is a
22 member of an affiliated group filing a consolidated
23 return, any exempt utility property purchased by an-
24 other member of such group shall be treated as pur-

1 chased by such corporation for purposes of applying
2 paragraph (1)(A).

3 “(7) TIME FOR ASSESSMENT OF DEFICI-
4 CIENCIES.—If the taxpayer has made the election
5 under paragraph (1) and any gain is recognized by
6 such taxpayer as provided in paragraph (1)(B),
7 then—

8 “(A) the statutory period for the assess-
9 ment of any deficiency, for any taxable year in
10 which any part of the gain on the transaction
11 is realized, attributable to such gain shall not
12 expire prior to the expiration of 3 years from
13 the date the Secretary is notified by the tax-
14 payer (in such manner as the Secretary may by
15 regulations prescribe) of the purchase of exempt
16 utility property or of an intention not to pur-
17 chase such property, and

18 “(B) such deficiency may be assessed be-
19 fore the expiration of such 3-year period not-
20 withstanding any law or rule of law which
21 would otherwise prevent such assessment.

22 “(8) PURCHASE.—For purposes of this sub-
23 section, the taxpayer shall be considered to have
24 purchased any property if the unadjusted basis of

1 such property is its cost within the meaning of sec-
2 tion 1012.

3 “(9) ELECTION.—An election under paragraph
4 (1) shall be made at such time and in such manner
5 as the Secretary may require and, once made, shall
6 be irrevocable.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to transactions occurring after the
9 date of the enactment of this Act, in taxable years ending
10 after such date.

11 **SEC. 42008. MODIFICATIONS TO SPECIAL RULES FOR NU-**
12 **CLEAR DECOMMISSIONING COSTS.**

13 (a) REPEAL OF LIMITATION ON DEPOSITS INTO
14 FUND BASED ON COST OF SERVICE; CONTRIBUTIONS
15 AFTER FUNDING PERIOD.—Subsection (b) of section
16 468A is amended to read as follows:

17 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

18 “(1) IN GENERAL.—The amount which a tax-
19 payer may pay into the Fund for any taxable year
20 shall not exceed the ruling amount applicable to
21 such taxable year.

22 “(2) CONTRIBUTIONS AFTER FUNDING PE-
23 RIOD.—Notwithstanding any other provision of this
24 section, a taxpayer may pay into the Fund in any
25 taxable year after the last taxable year to which the

1 ruling amount applies. Payments may not be made
2 under the preceding sentence to the extent such pay-
3 ments would cause the assets of the Fund to exceed
4 the nuclear decommissioning costs allocable to the
5 taxpayer's current or former interest in the nuclear
6 power plant to which the Fund relates. The limita-
7 tion under the preceding sentence shall be deter-
8 mined by taking into account a reasonable rate of
9 inflation for the nuclear decommissioning costs and
10 a reasonable after-tax rate of return on the assets
11 of the Fund until such assets are anticipated to be
12 expended.”.

13 (b) CLARIFICATION OF TREATMENT OF FUND
14 TRANSFERS.—Subsection (e) of section 468A is amended
15 by adding at the end the following new paragraph:

16 “(8) TREATMENT OF FUND TRANSFERS.—If, in
17 connection with the transfer of the taxpayer's inter-
18 est in a nuclear power plant, the taxpayer transfers
19 the Fund with respect to such power plant to the
20 transferee of such interest and the transferee elects
21 to continue the application of this section to such
22 Fund—

23 “(A) the transfer of such Fund shall not
24 cause such Fund to be disqualified from the ap-
25 plication of this section, and

1 “(B) no amount shall be treated as distrib-
 2 uted from such Fund, or be includible in gross
 3 income, by reason of such transfer.”.

4 (c) TREATMENT OF CERTAIN DECOMMISSIONING
 5 COSTS.—

6 (1) IN GENERAL.—Section 468A is amended by
 7 redesignating subsections (f) and (g) as subsections
 8 (g) and (h), respectively, and by inserting after sub-
 9 section (e) the following new subsection:

10 “(f) TRANSFERS INTO QUALIFIED FUNDS.—

11 “(1) IN GENERAL.—Notwithstanding subsection
 12 (b), any taxpayer maintaining a Fund to which this
 13 section applies with respect to a nuclear power plant
 14 may transfer into such Fund up to an amount equal
 15 to the excess of the total nuclear decommissioning
 16 costs with respect to such nuclear power plant over
 17 the portion of such costs taken into account in de-
 18 termining the ruling amount in effect immediately
 19 before the transfer.

20 “(2) DEDUCTION FOR AMOUNTS TRANS-
 21 FERRED.—

22 “(A) IN GENERAL.—Except as provided in
 23 subparagraph (C), the deduction allowed by
 24 subsection (a) for any transfer permitted by
 25 this subsection shall be allowed ratably over the

1 remaining estimated useful life (within the
2 meaning of subsection (d)(2)(A)) of the nuclear
3 power plant beginning with the taxable year
4 during which the transfer is made.

5 “(B) DENIAL OF DEDUCTION FOR PRE-
6 VIOUSLY DEDUCTED AMOUNTS.—No deduction
7 shall be allowed for any transfer under this sub-
8 section of an amount for which a deduction was
9 previously allowed or a corresponding amount
10 was not included in gross income. For purposes
11 of the preceding sentence, a ratable portion of
12 each transfer shall be treated as being from
13 previously deducted or excluded amounts to the
14 extent thereof.

15 “(C) TRANSFERS OF QUALIFIED FUNDS.—
16 If—

17 “(i) any transfer permitted by this
18 subsection is made to any Fund to which
19 this section applies, and

20 “(ii) such Fund is transferred there-
21 after,

22 any deduction under this subsection for taxable
23 years ending after the date that such Fund is
24 transferred shall be allowed to the transferor
25 for the taxable year which includes such date.

1 “(D) SPECIAL RULES.—

2 “(i) GAIN OR LOSS NOT RECOG-
3 NIZED.—No gain or loss shall be recog-
4 nized on any transfer permitted by this
5 subsection.

6 “(ii) TRANSFERS OF APPRECIATED
7 PROPERTY.—If appreciated property is
8 transferred in a transfer permitted by this
9 subsection, the amount of the deduction
10 shall be the adjusted basis of such prop-
11 erty.

12 “(3) NEW RULING AMOUNT REQUIRED.—Para-
13 graph (1) shall not apply to any transfer unless the
14 taxpayer requests from the Secretary a new schedule
15 of ruling amounts in connection with such transfer.

16 “(4) NO BASIS IN QUALIFIED FUNDS.—Not-
17 withstanding any other provision of law, the tax-
18 payer’s basis in any Fund to which this section ap-
19 plies shall not be increased by reason of any transfer
20 permitted by this subsection.”.

21 (2) NEW RULING AMOUNT TO TAKE INTO AC-
22 COUNT TOTAL COSTS.—Subparagraph (A) of section
23 468A(d)(2) is amended to read as follows:

24 “(A) fund the total nuclear decommis-
25 sioning costs with respect to such power plant

1 over the estimated useful life of such power
2 plant, and”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2003.

6 **SEC. 42009. TREATMENT OF CERTAIN INCOME OF CO-**
7 **OPERATIVES.**

8 (a) INCOME FROM OPEN ACCESS AND NUCLEAR DE-
9 COMMISSIONING TRANSACTIONS.—

10 (1) IN GENERAL.—Subparagraph (C) of section
11 501(c)(12) is amended by striking “or” at the end
12 of clause (i), by striking clause (ii), and by adding
13 at the end the following new clauses:

14 “(ii) from any provision or sale of
15 transmission service or ancillary services if
16 such services are provided on a non-
17 discriminatory open access basis under an
18 independent transmission provider agree-
19 ment approved by FERC (other than in-
20 come received or accrued directly or indi-
21 rectly from a member),

22 “(iii) from any nuclear decommis-
23 sioning transaction, or

24 “(iv) from any asset exchange or con-
25 version transaction.”.

1 (2) DEFINITIONS AND SPECIAL RULES.—Para-
2 graph (12) of section 501(c) is amended by adding
3 at the end the following new subparagraphs:

4 “(E) For purposes of subparagraph (C)(ii),
5 the term ‘FERC’ means the Federal Energy
6 Regulatory Commission and references to such
7 term shall be treated as including the Public
8 Utility Commission of Texas with respect to
9 any ERCOT utility (as defined in section
10 212(k)(2)(B) of the Federal Power Act (16
11 U.S.C. 824k(k)(2)(B))).

12 “(F) For purposes of subparagraph
13 (C)(iii), the term ‘nuclear decommissioning
14 transaction’ means—

15 “(i) any transfer into a trust, fund, or
16 instrument established to pay any nuclear
17 decommissioning costs if the transfer is in
18 connection with the transfer of the mutual
19 or cooperative electric company’s interest
20 in a nuclear power plant or nuclear power
21 plant unit,

22 “(ii) any distribution from any trust,
23 fund, or instrument established to pay any
24 nuclear decommissioning costs, or

1 “(iii) any earnings from any trust,
2 fund, or instrument established to pay any
3 nuclear decommissioning costs.

4 “(G) For purposes of subparagraph
5 (C)(iv), the term ‘asset exchange or conversion
6 transaction’ means any voluntary exchange or
7 involuntary conversion of any property related
8 to generating, transmitting, distributing, or sell-
9 ing electric energy by a mutual or cooperative
10 electric company, the gain from which qualifies
11 for deferred recognition under section 1031 or
12 1033, but only if the replacement property ac-
13 quired by such company pursuant to such sec-
14 tion constitutes property which is used, or to be
15 used, for—

16 “(i) generating, transmitting, distrib-
17 uting, or selling electric energy, or

18 “(ii) producing, transmitting, distrib-
19 uting, or selling natural gas.”.

20 (b) TREATMENT OF INCOME FROM LOAD LOSS
21 TRANSACTIONS, ETC.—Paragraph (12) of section 501(c),
22 as amended by subsection (a)(2), is amended by adding
23 after subparagraph (G) the following new subparagraph:

24 “(H)(i) In the case of a mutual or coopera-
25 tive electric company described in this para-

graph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

“(ii) For purposes of clause (i), the term ‘load loss transaction’ means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

“(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

“(iv) For purposes of clause (iii), a mutual or cooperative electric company’s annual load loss for each year of the recovery period is the amount (if any) by which—

“(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

“(II) the megawatt hours of electric energy sold during the base year to such members.

1 “(v) For purposes of clause (iv)(II), the
2 term ‘base year’ means—

3 “(I) the calendar year preceding the
4 start-up year, or

5 “(II) at the election of the electric
6 company, the second or third calendar
7 years preceding the start-up year.

8 “(vi) For purposes of this subparagraph,
9 the recovery period is the 7-year period begin-
10 ning with the start-up year.

11 “(vii) For purposes of this subparagraph,
12 the start-up year is the calendar year which in-
13 cludes the date of the enactment of this sub-
14 paragraph or, if later, at the election of the mu-
15 tual or cooperative electric company—

16 “(I) the first year that such electric
17 company offers nondiscriminatory open ac-
18 cess, or

19 “(II) the first year in which at least
20 10 percent of such electric company’s sales
21 are not to members of such electric com-
22 pany.

23 “(viii) A company shall not fail to be treat-
24 ed as a mutual or cooperative company for pur-
25 poses of this paragraph or as a corporation op-

1 erating on a cooperative basis for purposes of
2 section 1381(a)(2)(C) by reason of the treat-
3 ment under clause (i).

4 “(ix) For purposes of subparagraph (A), in
5 the case of a mutual or cooperative electric
6 company, income received, or accrued, indirectly
7 from a member shall be treated as an amount
8 collected from members for the sole purpose of
9 meeting losses and expenses.”.

10 (c) EXCEPTION FROM UNRELATED BUSINESS TAX-
11 ABLE INCOME.—Subsection (b) of section 512 (relating to
12 modifications) is amended by adding at the end the fol-
13 lowing new paragraph:

14 “(18) TREATMENT OF MUTUAL OR COOPERA-
15 TIVE ELECTRIC COMPANIES.—In the case of a mu-
16 tual or cooperative electric company described in sec-
17 tion 501(c)(12), there shall be excluded income
18 which is treated as member income under subpara-
19 graph (H) thereof.”.

20 (d) CROSS REFERENCE.—Section 1381 is amended
21 by adding at the end the following new subsection:

1 “(c) CROSS REFERENCE.—

“For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).”.

2 (e) EFFECTIVE DATE.—The amendments made by
3 this section shall apply to taxable years beginning after
4 the date of the enactment of this Act.

5 **SEC. 42010. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**
6 **MENTS FOR NATURAL GAS.**

7 (a) IN GENERAL.—Subsection (b) of section 148 (re-
8 lating to higher yielding investments) is amended by add-
9 ing at the end the following new paragraph:

10 “(4) SAFE HARBOR FOR PREPAID NATURAL
11 GAS.—

12 “(A) IN GENERAL.—The term ‘investment-
13 type property’ does not include a prepayment
14 under a qualified natural gas supply contract.

15 “(B) QUALIFIED NATURAL GAS SUPPLY
16 CONTRACT.—For purposes of this paragraph,
17 the term ‘qualified natural gas supply contract’
18 means any contract to acquire natural gas for
19 resale by a utility owned by a governmental
20 unit if the amount of gas permitted to be ac-
21 quired under the contract by the utility during
22 any year does not exceed the sum of—

23 “(i) the annual average amount dur-
24 ing the testing period of natural gas pur-

1 chased (other than for resale) by cus-
2 tomers of such utility who are located
3 within the service area of such utility, and

4 “(ii) the amount of natural gas to be
5 used to transport the prepaid natural gas
6 to the utility during such year.

7 “(C) NATURAL GAS USED TO GENERATE
8 ELECTRICITY.—Natural gas used to generate
9 electricity shall be taken into account in deter-
10 mining the average under subparagraph
11 (B)(i)—

12 “(i) only if the electricity is generated
13 by a utility owned by a governmental unit,
14 and

15 “(ii) only to the extent that the elec-
16 tricity is sold (other than for resale) to
17 customers of such utility who are located
18 within the service area of such utility.

19 “(D) ADJUSTMENTS FOR CHANGES IN
20 CUSTOMER BASE.—

21 “(i) NEW BUSINESS CUSTOMERS.—
22 If—

23 “(I) after the close of the testing
24 period and before the date of issuance
25 of the issue, the utility owned by a

1 governmental unit enters into a con-
2 tract to supply natural gas (other
3 than for resale) for a business use at
4 a property within the service area of
5 such utility, and

6 “(II) the utility did not supply
7 natural gas to such property during
8 the testing period or the ratable
9 amount of natural gas to be supplied
10 under the contract is significantly
11 greater than the ratable amount of
12 gas supplied to such property during
13 the testing period,

14 then a contract shall not fail to be treated
15 as a qualified natural gas supply contract
16 by reason of supplying the additional nat-
17 ural gas under the contract referred to in
18 subclause (I).

19 “(ii) LOST CUSTOMERS.—The average
20 under subparagraph (B)(i) shall not exceed
21 the annual amount of natural gas reason-
22 ably expected to be purchased (other than
23 for resale) by persons who are located
24 within the service area of such utility and

1 who, as of the date of issuance of the
2 issue, are customers of such utility.

3 “(E) RULING REQUESTS.—The Secretary
4 may increase the average under subparagraph
5 (B)(i) for any period if the utility owned by the
6 governmental unit establishes to the satisfaction
7 of the Secretary that, based on objective evi-
8 dence of growth in natural gas consumption or
9 population, such average would otherwise be in-
10 sufficient for such period.

11 “(F) ADJUSTMENT FOR NATURAL GAS
12 OTHERWISE ON HAND.—

13 “(i) IN GENERAL.—The amount oth-
14 erwise permitted to be acquired under the
15 contract for any period shall be reduced
16 by—

17 “(I) the applicable share of nat-
18 ural gas held by the utility on the
19 date of issuance of the issue, and

20 “(II) the natural gas (not taken
21 into account under subclause (I))
22 which the utility has a right to ac-
23 quire during such period (determined
24 as of the date of issuance of the
25 issue).

1 “(ii) APPLICABLE SHARE.—For pur-
2 poses of the clause (i), the term ‘applicable
3 share’ means, with respect to any period,
4 the natural gas allocable to such period if
5 the gas were allocated ratably over the pe-
6 riod to which the prepayment relates.

7 “(G) INTENTIONAL ACTS.—Subparagraph
8 (A) shall cease to apply to any issue if the util-
9 ity owned by the governmental unit engages in
10 any intentional act to render the volume of nat-
11 ural gas acquired by such prepayment to be in
12 excess of the sum of—

13 “(i) the amount of natural gas needed
14 (other than for resale) by customers of
15 such utility who are located within the
16 service area of such utility, and

17 “(ii) the amount of natural gas used
18 to transport such natural gas to the utility.

19 “(H) TESTING PERIOD.—For purposes of
20 this paragraph, the term ‘testing period’ means,
21 with respect to an issue, the most recent 5 cal-
22 endar years ending before the date of issuance
23 of the issue.

1 “(I) SERVICE AREA.—For purposes of this
2 paragraph, the service area of a utility owned
3 by a governmental unit shall be comprised of—

4 “(i) any area throughout which such
5 utility provided at all times during the
6 testing period—

7 “(I) in the case of a natural gas
8 utility, natural gas transmission or
9 distribution services, and

10 “(II) in the case of an electric
11 utility, electricity distribution services,

12 “(ii) any area within a county contig-
13 uous to the area described in clause (i) in
14 which retail customers of such utility are
15 located if such area is not also served by
16 another utility providing natural gas or
17 electricity services, as the case may be, and

18 “(iii) any area recognized as the serv-
19 ice area of such utility under State or Fed-
20 eral law.”.

21 (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY
22 TO PREPAYMENTS FOR NATURAL GAS.—Paragraph (2) of
23 section 141(c) (providing exceptions to the private loan fi-
24 nancing test) is amended by striking “or” at the end of
25 subparagraph (A), by striking the period at the end of

1 subparagraph (B) and inserting “, or”, and by adding at
 2 the end the following new subparagraph:

3 “(C) is a qualified natural gas supply con-
 4 tract (as defined in section 148(b)(4)).”.

5 (c) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply to obligations issued after the date
 7 of the enactment of this Act.

8 **TITLE III—PRODUCTION**

9 **SEC. 43001. OIL AND GAS FROM MARGINAL WELLS.**

10 (a) IN GENERAL.—Subpart D of part IV of sub-
 11 chapter A of chapter 1 (relating to business credits) is
 12 amended by adding at the end the following:

13 **“SEC. 45I. CREDIT FOR PRODUCING OIL AND GAS FROM** 14 **MARGINAL WELLS.**

15 “(a) GENERAL RULE.—For purposes of section 38,
 16 the marginal well production credit for any taxable year
 17 is an amount equal to the product of—

18 “(1) the credit amount, and

19 “(2) the qualified credit oil production and the
 20 qualified natural gas production which is attrib-
 21 utable to the taxpayer.

22 “(b) CREDIT AMOUNT.—For purposes of this sec-
 23 tion—

24 “(1) IN GENERAL.—The credit amount is—

1 “(A) \$3 per barrel of qualified crude oil
2 production, and

3 “(B) 50 cents per 1,000 cubic feet of
4 qualified natural gas production.

5 “(2) REDUCTION AS OIL AND GAS PRICES IN-
6 CREASE.—

7 “(A) IN GENERAL.—The \$3 and 50 cents
8 amounts under paragraph (1) shall each be re-
9 duced (but not below zero) by an amount which
10 bears the same ratio to such amount (deter-
11 mined without regard to this paragraph) as—

12 “(i) the excess (if any) of the applica-
13 ble reference price over \$15 (\$1.67 for
14 qualified natural gas production), bears to

15 “(ii) \$3 (\$0.33 for qualified natural
16 gas production).

17 The applicable reference price for a taxable
18 year is the reference price of the calendar year
19 preceding the calendar year in which the tax-
20 able year begins.

21 “(B) INFLATION ADJUSTMENT.—In the
22 case of any taxable year beginning in a calendar
23 year after 2003, each of the dollar amounts
24 contained in subparagraph (A) shall be in-
25 creased to an amount equal to such dollar

1 amount multiplied by the inflation adjustment
2 factor for such calendar year (determined under
3 section 43(b)(3)(B) by substituting ‘2002’ for
4 ‘1990’).

5 “(C) REFERENCE PRICE.—For purposes of
6 this paragraph, the term ‘reference price’
7 means, with respect to any calendar year—

8 “(i) in the case of qualified crude oil
9 production, the reference price determined
10 under section 29(d)(2)(C), and

11 “(ii) in the case of qualified natural
12 gas production, the Secretary’s estimate of
13 the annual average wellhead price per
14 1,000 cubic feet for all domestic natural
15 gas.

16 “(c) QUALIFIED CRUDE OIL AND NATURAL GAS
17 PRODUCTION.—For purposes of this section—

18 “(1) IN GENERAL.—The terms ‘qualified crude
19 oil production’ and ‘qualified natural gas production’
20 mean domestic crude oil or natural gas which is pro-
21 duced from a qualified marginal well.

22 “(2) LIMITATION ON AMOUNT OF PRODUCTION
23 WHICH MAY QUALIFY.—

24 “(A) IN GENERAL.—Crude oil or natural
25 gas produced during any taxable year from any

1 well shall not be treated or qualified crude oil
2 production or qualified natural gas production
3 to the extent production from the well during
4 the taxable year exceeds 1,095 barrels or barrel
5 equivalents.

6 “(B) PROPORTIONATE REDUCTIONS.—

7 “(i) SHORT TAXABLE YEARS.—In the
8 case of a short taxable year, the limitations
9 under this paragraph shall be proportion-
10 ately reduced to reflect the ratio which the
11 number of days in such taxable year bears
12 to 365.

13 “(ii) WELLS NOT IN PRODUCTION EN-
14 TIRE YEAR.—In the case of a well which is
15 not capable of production during each day
16 of a taxable year, the limitations under
17 this paragraph applicable to the well shall
18 be proportionately reduced to reflect the
19 ratio which the number of days of produc-
20 tion bears to the total number of days in
21 the taxable year.

22 “(3) DEFINITIONS.—

23 “(A) QUALIFIED MARGINAL WELL.—The
24 term ‘qualified marginal well’ means a domestic
25 well—

1 “(i) the production from which during
2 the taxable year is treated as marginal
3 production under section 613A(c)(6), or

4 “(ii) which, during the taxable year—

5 “(I) has average daily production
6 of not more than 25 barrel equiva-
7 lents, and

8 “(II) produces water at a rate
9 not less than 95 percent of total well
10 effluent.

11 “(B) CRUDE OIL, ETC.—The terms ‘crude
12 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have
13 the meanings given such terms by section
14 613A(e).

15 “(C) BARREL EQUIVALENT.—The term
16 ‘barrel equivalent’ means, with respect to nat-
17 ural gas, a conversion ratio of 6,000 cubic
18 feet of natural gas to 1 barrel of crude oil.

19 “(d) OTHER RULES.—

20 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
21 PAYER.—In the case of a qualified marginal well in
22 which there is more than one owner of operating in-
23 terests in the well and the crude oil or natural gas
24 production exceeds the limitation under subsection
25 (c)(2), qualifying crude oil production or qualifying

1 natural gas production attributable to the taxpayer
2 shall be determined on the basis of the ratio which
3 taxpayer's revenue interest in the production bears
4 to the aggregate of the revenue interests of all oper-
5 ating interest owners in the production.

6 “(2) OPERATING INTEREST REQUIRED.—Any
7 credit under this section may be claimed only on
8 production which is attributable to the holder of an
9 operating interest.

10 “(3) PRODUCTION FROM NONCONVENTIONAL
11 SOURCES EXCLUDED.—In the case of production
12 from a qualified marginal well which is eligible for
13 the credit allowed under section 29 for the taxable
14 year, no credit shall be allowable under this section
15 unless the taxpayer elects not to claim the credit
16 under section 29 with respect to the well.”.

17 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
18 tion 38(b) is amended by striking “plus” at the end of
19 paragraph (16), by striking the period at the end of para-
20 graph (17) and inserting “, plus”, and by adding at the
21 end the following:

22 “(18) the marginal oil and gas well production
23 credit determined under section 45I(a).”.

1 (c) CARRYBACK.—Subsection (a) of section 39 (relat-
 2 ing to carryback and carryforward of unused credits gen-
 3 erally) is amended by adding at the end the following:

4 “(3) 10-YEAR CARRYBACK FOR MARGINAL OIL
 5 AND GAS WELL PRODUCTION CREDIT.—In the case
 6 of the marginal oil and gas well production credit—

7 “(A) this section shall be applied sepa-
 8 rately from the business credit (other than the
 9 marginal oil and gas well production credit),

10 “(B) paragraph (1) shall be applied by
 11 substituting ‘10 taxable years’ for ‘1 taxable
 12 years’ in subparagraph (A) thereof, and

13 “(C) paragraph (2) shall be applied—

14 “(i) by substituting ‘31 taxable years’
 15 for ‘21 taxable years’ in subparagraph (A)
 16 thereof, and

17 “(ii) by substituting ‘30 taxable years’
 18 for ‘20 taxable years’ in subparagraph (A)
 19 thereof.”.

20 (d) COORDINATION WITH SECTION 29.—Section
 21 29(a) is amended by striking “There” and inserting “At
 22 the election of the taxpayer, there”.

23 (e) CLERICAL AMENDMENT.—The table of sections
 24 for subpart D of part IV of subchapter A of chapter 1
 25 is amended by adding at the end the following:

“Sec. 45I. Credit for producing oil and gas from marginal wells.”.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to production in taxable years be-
3 ginning after December 31, 2003.

4 **SEC. 43002. TEMPORARY SUSPENSION OF LIMITATION**
5 **BASED ON 65 PERCENT OF TAXABLE INCOME**
6 **AND EXTENSION OF SUSPENSION OF TAX-**
7 **ABLE INCOME LIMIT WITH RESPECT TO MAR-**
8 **GINAL PRODUCTION.**

9 (a) LIMITATION BASED ON 65 PERCENT OF TAX-
10 ABLE INCOME.—Subsection (d) of section 613A (relating
11 to limitation on percentage depletion in case of oil and
12 gas wells) is amended by adding at the end the following
13 new paragraph:

14 “(6) TEMPORARY SUSPENSION OF TAXABLE IN-
15 COME LIMIT.—Paragraph (1) shall not apply to tax-
16 able years beginning after December 31, 2003, and
17 before January 1, 2007, including with respect to
18 amounts carried under the second sentence of para-
19 graph (1) to such taxable years.”.

20 (b) EXTENSION OF SUSPENSION OF TAXABLE IN-
21 COME LIMIT WITH RESPECT TO MARGINAL PRODUC-
22 TION.—Subparagraph (H) of section 613A(c)(6) (relating
23 to temporary suspension of taxable income limit with re-
24 spect to marginal production) is amended by striking
25 “2004” and inserting “2007”.

1 (c) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to taxable years beginning after
3 December 31, 2003.

4 **SEC. 43003. AMORTIZATION OF DELAY RENTAL PAYMENTS.**

5 (a) IN GENERAL.—Section 167 (relating to deprecia-
6 tion) is amended by redesignating subsection (h) as sub-
7 section (i) and by inserting after subsection (g) the fol-
8 lowing new subsection:

9 “(h) AMORTIZATION OF DELAY RENTAL PAYMENTS
10 FOR DOMESTIC OIL AND GAS WELLS.—

11 “(1) IN GENERAL.—Any delay rental payment
12 paid or incurred in connection with the development
13 of oil or gas wells within the United States (as de-
14 fined in section 638) shall be allowed as a deduction
15 ratably over the 24-month period beginning on the
16 date that such payment was paid or incurred.

17 “(2) HALF-YEAR CONVENTION.—For purposes
18 of paragraph (1), any payment paid or incurred dur-
19 ing the taxable year shall be treated as paid or in-
20 curred on the mid-point of such taxable year.

21 “(3) EXCLUSIVE METHOD.—Except as provided
22 in this subsection, no depreciation or amortization
23 deduction shall be allowed with respect to such pay-
24 ments.

1 “(4) TREATMENT UPON ABANDONMENT.—If
 2 any property to which a delay rental payment relates
 3 is retired or abandoned during the 24-month period
 4 described in paragraph (1), no deduction shall be al-
 5 lowed on account of such retirement or abandon-
 6 ment and the amortization deduction under this sub-
 7 section shall continue with respect to such payment.

8 “(5) DELAY RENTAL PAYMENTS.—For purposes
 9 of this subsection, the term ‘delay rental payment’
 10 means an amount paid for the privilege of deferring
 11 development of an oil or gas well under an oil or gas
 12 lease.”.

13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section shall apply to amounts paid or incurred in tax-
 15 able years beginning after December 31, 2003.

16 **SEC. 43004. AMORTIZATION OF GEOLOGICAL AND GEO-**
 17 **PHYSICAL EXPENDITURES.**

18 (a) IN GENERAL.—Section 167 (relating to deprecia-
 19 tion) is amended by redesignating subsection (i) as sub-
 20 section (j) and by inserting after subsection (h) the fol-
 21 lowing new subsection:

22 “(i) AMORTIZATION OF GEOLOGICAL AND GEO-
 23 PHYSICAL EXPENDITURES.—

24 “(1) IN GENERAL.—Any geological and geo-
 25 physical expenses paid or incurred in connection

1 with the exploration for, or development of, oil or
 2 gas within the United States (as defined in section
 3 638) shall be allowed as a deduction ratably over the
 4 24-month period beginning on the date that such ex-
 5 pense was paid or incurred.

6 “(2) SPECIAL RULES.—For purposes of this
 7 subsection, rules similar to the rules of paragraphs
 8 (2), (3), and (4) of subsection (h) shall apply.”.

9 (b) EFFECTIVE DATE.—The amendment made by
 10 this section shall apply to costs paid or incurred in taxable
 11 years beginning after December 31, 2003.

12 **SEC. 43005. EXTENSION AND MODIFICATION OF CREDIT**
 13 **FOR PRODUCING FUEL FROM A NONCONVEN-**
 14 **TIONAL SOURCE.**

15 (a) IN GENERAL.—Section 29 is amended by adding
 16 at the end the following new subsection:

17 “(h) EXTENSION FOR OTHER FACILITIES.—

18 “(1) EXTENSION FOR OIL AND CERTAIN GAS.—

19 In the case of a well for producing qualified fuels de-
 20 scribed in subparagraph (A) or (B)(i) of subsection

21 (c)(1)—

22 “(A) APPLICATION OF CREDIT FOR NEW
 23 WELLS.—Notwithstanding subsection (f), this
 24 section shall apply with respect to such fuels—

1 “(i) which are produced from a well
2 drilled after the date of the enactment of
3 this subsection and before January 1,
4 2007, and

5 “(ii) which are sold not later than the
6 close of the 4-year period beginning on the
7 date that such well is drilled, or, if earlier,
8 January 1, 2010.

9 “(B) EXTENSION OF CREDIT FOR OLD
10 WELLS.—Subsection (f)(2) shall be applied by
11 substituting ‘2007’ for ‘2003’ with respect to
12 wells described in subsection (f)(1)(A) with re-
13 spect to such fuels.

14 “(2) EXTENSION FOR FACILITIES PRODUCING
15 QUALIFIED FUEL FROM LANDFILL GAS.—

16 “(A) IN GENERAL.—In the case of a facil-
17 ity for producing qualified fuel from landfill gas
18 which was placed in service after June 30,
19 1998, and before January 1, 2007, this section
20 shall apply to fuel produced at such facility dur-
21 ing the 5-year period beginning on the later
22 of—

23 “(i) the date such facility was placed
24 in service, or

1 “(ii) the date of the enactment of this
2 subsection.

3 “(B) REDUCTION OF CREDIT FOR CERTAIN
4 LANDFILL FACILITIES.—In the case of a facility
5 to which paragraph (1) applies and which is lo-
6 cated at a landfill which is required pursuant to
7 section 60.751(b)(2) or section 60.33c of title
8 40, Code of Federal Regulations (as in effect on
9 April 3, 2003) to install and operate a collec-
10 tion and control system which captures gas gen-
11 erated within the landfill, subsection (a)(1)
12 shall be applied to gas so captured by sub-
13 stituting ‘\$2’ for ‘\$3’ for the taxable year dur-
14 ing which such system is required to be in-
15 stalled and operated.

16 “(3) SPECIAL RULES.—In determining the
17 amount of credit allowable under this section solely
18 by reason of this subsection—

19 “(A) DAILY LIMIT.—The amount of quali-
20 fied fuels sold during any taxable year which
21 may be taken into account by reason of this
22 subsection with respect to any project shall not
23 exceed an average barrel-of-oil equivalent of
24 200,000 cubic feet of natural gas per day. Days
25 before the date the project is placed in service

1 shall not be taken into account in determining
2 such average.

3 “(B) EXTENSION PERIOD TO COMMENCE
4 WITH UNADJUSTED CREDIT AMOUNT.—In the
5 case of fuels sold during 2003, the dollar
6 amount applicable under subsection (a)(1) shall
7 be \$3 (without regard to subsection (b)(2)). In
8 the case of fuels sold after 2003, subparagraph
9 (B) of subsection (d)(2) shall be applied by sub-
10 stituting ‘2003’ for ‘1979’.”.

11 (b) TREATMENT AS BUSINESS CREDIT.—

12 (1) CREDIT MOVED TO SUBPART RELATING TO
13 BUSINESS RELATED CREDITS.—The Internal Rev-
14 enue Code of 1986 is amended by redesignating sec-
15 tion 29 as section 45J and by moving section 45J
16 (as so redesignated) from subpart B of part IV of
17 subchapter A of chapter 1 to the end of subpart D
18 of part IV of subchapter A of chapter 1.

19 (2) CREDIT TREATED AS BUSINESS CREDIT.—
20 Section 38(b) is amended by striking “plus” at the
21 end of paragraph (17), by striking the period at the
22 end of paragraph (18) and inserting “, plus”, and
23 by adding at the end the following:

24 “(19) the nonconventional source production
25 credit determined under section 45J(a).”.

1 (3) CONFORMING AMENDMENTS.—

2 (A) Section 30(b)(2)(A), as redesignated
3 by section 110(a), is amended by striking “sec-
4 tions 27 and 29” and inserting “section 27”.

5 (B) Section 30B(d), as added by section
6 41011, is amended by striking “, 29,”.

7 (C) Section 39(d) is amended by adding at
8 the end the following new paragraph:

9 “(13) NO CARRYBACK FOR NONCONVENTIONAL
10 SOURCE PRODUCTION CREDIT.—No portion of the
11 unused business credit for any taxable year which is
12 attributable to the credit under section 45J may be
13 carried back to a taxable year ending before April 1,
14 2003.”.

15 (D) Sections 43(b)(2), 45I(b)(2)(C) (as
16 added by section 43001), and 613A(c)(6)(C)
17 are each amended by striking “section
18 29(d)(2)(C)” and inserting “section
19 45J(d)(2)(C)”.

20 (E) Paragraph (9) of section 45(c), as
21 added by section 41002(c), is amended by strik-
22 ing “section 29” and inserting “section 45J”
23 and by striking “SECTION 29” in the heading of
24 such paragraph and inserting “SECTION 45J”.

1 (F) Section 45I(d)(3), as added by section
2 43001, is amended by striking “section 29”
3 each place it appears and inserting “section
4 45J”.

5 (G) Section 45J(a), as amended by section
6 43001(d) and redesignated by paragraph (1), is
7 amended by striking “At the election of the tax-
8 payer, there shall be allowed as a credit against
9 the tax imposed by this chapter for the taxable
10 year” and inserting “For purposes of section
11 38, if the taxpayer elects to have this section
12 apply, the nonconventional source production
13 credit determined under this section for the tax-
14 able year is”.

15 (H) Section 45J(b), as so redesignated, is
16 amended by striking paragraph (6).

17 (I) Section 53(d)(1)(B)(iii) is amended by
18 striking “under section 29” and all that follows
19 through “or not allowed”.

20 (J) Section 55(c)(2) is amended by strik-
21 ing “29(b)(6),”.

22 (K) Subsection (a) of section 772 is
23 amended by inserting “and” at the end of para-
24 graph (9), by striking paragraph (10), and by

1 redesignating paragraph (11) as paragraph
2 (10).

3 (L) Paragraph (5) of section 772(d) is
4 amended by striking “the foreign tax credit,
5 and the credit allowable under section 29” and
6 inserting “and the foreign tax credit”.

7 (M) The table of sections for subpart B of
8 part IV of subchapter A of chapter 1 is amend-
9 ed by striking the item relating to section 29.

10 (N) The table of sections for subpart D of
11 part IV of subchapter A of chapter 1 is amend-
12 ed by inserting after the item relating to section
13 45I the following new item:

“Sec. 45J. Credit for producing fuel from a nonconventional
source.”.

14 (c) EFFECTIVE DATES.—

15 (1) IN GENERAL.—The amendment made by
16 subsection (a) shall apply to fuel sold after March
17 31, 2003, in taxable years ending after such date.

18 (2) TREATMENT AS BUSINESS CREDIT.—The
19 amendments made by subsection (b) shall apply to
20 taxable years ending after March 31, 2003.

1 **SEC. 43006. BUSINESS RELATED ENERGY CREDITS AL-**
2 **LOWED AGAINST REGULAR AND MINIMUM**
3 **TAX.**

4 (a) IN GENERAL.—Subsection (c) of section 38 (re-
5 lating to limitation based on amount of tax) is amended
6 by redesignating paragraph (4) as paragraph (5) and by
7 inserting after paragraph (3) the following new paragraph:

8 “(4) SPECIAL RULES FOR SPECIFIED ENERGY
9 CREDITS.—

10 “(A) IN GENERAL.—In the case of speci-
11 fied energy credits—

12 “(i) this section and section 39 shall
13 be applied separately with respect to such
14 credits, and

15 “(ii) in applying paragraph (1) to
16 such credits—

17 “(I) the tentative minimum tax
18 shall be treated as being zero, and

19 “(II) the limitation under para-
20 graph (1) (as modified by subclause
21 (I)) shall be reduced by the credit al-
22 lowed under subsection (a) for the
23 taxable year (other than the specified
24 energy credits).

25 “(B) SPECIFIED ENERGY CREDITS.—For
26 purposes of this subsection, the term ‘specified

1 energy credits’ means the credits determined
2 under sections 45G, 45H, and 45I.

3 “(C) SPECIAL RULE FOR QUALIFIED WIND
4 FACILITIES.—For purposes of this subsection,
5 the term ‘specified energy credits’ shall include
6 the credit determined under section 45 to the
7 extent that such credit is attributable to elec-
8 tricity produced—

9 “(i) at a facility using wind to
10 produce electricity which is originally
11 placed in service after the date of the en-
12 actment of this paragraph, and

13 “(ii) during the 4-year period begin-
14 ning on the date that such facility was
15 originally placed in service.”.

16 (b) CONFORMING AMENDMENTS.—Paragraphs
17 (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each
18 amended by inserting “or the specified energy credits”
19 after “employee credit”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years ending after the
22 date of the enactment of this Act.

1 **SEC. 43007. TEMPORARY REPEAL OF ALTERNATIVE MIN-**
2 **IMUM TAX PREFERENCE FOR INTANGIBLE**
3 **DRILLING COSTS.**

4 (a) IN GENERAL.—Clause (ii) of section 57(a)(2)(E)
5 is amended by adding at the end the following new sen-
6 tence: “The preceding sentence shall not apply to taxable
7 years beginning after December 31, 2003, and before Jan-
8 uary 1, 2006.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 December 31, 2003.

12 **SEC. 43008. ALLOWANCE OF ENHANCED RECOVERY CREDIT**
13 **AGAINST THE ALTERNATIVE MINIMUM TAX.**

14 (a) IN GENERAL.—Subparagraph (B) of section
15 38(c)(4), as amended by section 43006, is amended by
16 adding at the end the following new sentence: “For taxable
17 years beginning after December 31, 2003, and before Jan-
18 uary 1, 2006, such term includes the credit determined
19 under section 43.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to taxable years beginning after
22 December 31, 2003.

TITLE IV—CORPORATE EXPATRIATION

SEC. 44001. TAX TREATMENT OF CORPORATE EXPATRIATION.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

“SEC. 7874. TAX TREATMENT OF CORPORATE EXPATRIATION.

“(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

“(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

“(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

“(A) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substan-

1 tially all of the properties constituting a trade
2 or business of a domestic partnership,

3 “(B) after the acquisition at least 80 per-
4 cent of the stock (by vote or value) of the entity
5 is held—

6 “(i) in the case of an acquisition with
7 respect to a domestic corporation, by
8 former shareholders of the domestic cor-
9 poration by reason of holding stock in the
10 domestic corporation, or

11 “(ii) in the case of an acquisition with
12 respect to a domestic partnership, by
13 former partners of the domestic partner-
14 ship by reason of holding a capital or prof-
15 its interest in the domestic partnership,
16 and

17 “(C) the expanded affiliated group which
18 after the acquisition includes the entity does
19 not have substantial business activities in the
20 foreign country in which or under the law of
21 which the entity is created or organized when
22 compared to the total business activities of such
23 expanded affiliated group.

1 “(3) TERMINATION.—This subsection shall not
2 apply to any acquisition completed after December
3 31, 2004.

4 “(b) DEFINITIONS AND SPECIAL RULES.—For pur-
5 poses of this section—

6 “(1) FOREIGN INCORPORATED ENTITY.—The
7 term ‘foreign incorporated entity’ means any entity
8 which is, or but for subsection (a) would be, treated
9 as a foreign corporation for purposes of this title.

10 “(2) EXPANDED AFFILIATED GROUP.—The
11 term ‘expanded affiliated group’ means an affiliated
12 group as defined in section 1504(a) but without re-
13 gard to paragraphs (2), (3), and (4) of section
14 1504(b), except that section 1504(a) shall be applied
15 by substituting ‘more than 50 percent’ for ‘at least
16 80 percent’ each place it appears.

17 “(3) CERTAIN STOCK DISREGARDED.—There
18 shall not be taken into account in determining own-
19 ership under subsection (a)(3)(B)—

20 “(A) stock held by members of the ex-
21 panded affiliated group which includes the for-
22 eign incorporated entity, or

23 “(B) stock of such foreign incorporated en-
24 tity which is sold in a public offering related to

1 the acquisition described in subsection
2 (a)(3)(A).

3 “(4) PLAN DEEMED IN CERTAIN CASES.—If a
4 foreign incorporated entity acquires directly or indi-
5 rectly substantially all of the properties of a domes-
6 tic corporation or partnership during the 4-year pe-
7 riod beginning on the date which is 2 years before
8 the ownership requirements of subsection (a)(3)(B)
9 are met, such actions shall be treated as pursuant
10 to a plan.

11 “(5) CERTAIN TRANSFERS DISREGARDED.—The
12 transfer of properties or liabilities (including by con-
13 tribution or distribution) shall be disregarded if such
14 transfers are part of a plan a principal purpose of
15 which is to avoid the purposes of this section.

16 “(6) SPECIAL RULE FOR RELATED PARTNER-
17 SHIPS.—For purposes of applying subsection
18 (a)(3)(B) to the acquisition of a domestic partner-
19 ship, except as provided in regulations, all partner-
20 ships which are under common control (within the
21 meaning of section 482) shall be treated as 1 part-
22 nership.

23 “(7) REGULATIONS.—The Secretary shall pre-
24 scribe such regulations as may be appropriate to de-

1 termine whether a corporation is an inverted domes-
2 tie corporation, including regulations—

3 “(A) to treat warrants, options, contracts
4 to acquire stock, convertible debt interests, and
5 other similar interests as stock, and

6 “(B) to treat stock as not stock.

7 “(c) SPECIAL RULE FOR TREATIES.—Nothing in sec-
8 tion 894 or 7852(d) or in any other provision of law shall
9 be construed as permitting an exemption, by reason of any
10 treaty obligation of the United States heretofore or here-
11 after entered into, from the provisions of this section.

12 “(d) REGULATIONS.—The Secretary shall provide
13 such regulations as are necessary to carry out this section,
14 including regulations providing for such adjustments to
15 the application of this section as are necessary to prevent
16 the avoidance of the purposes of this section, including the
17 avoidance of such purposes through—

18 “(1) the use of related persons, pass-through or
19 other noncorporate entities, or other intermediaries,
20 or

21 “(2) transactions designed to have persons
22 cease to be (or not become) members of expanded
23 affiliated groups or related persons.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for subchapter C of chapter 80 is amended by adding
3 at the end the following new item:

“Sec. 7874. Tax treatment of corporate expatriation.”

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years ending after
6 March 4, 2003.

7 **SEC. 44002. EXPRESSING THE SENSE OF THE CONGRESS**

8 **THAT TAX REFORM IS NEEDED TO ADDRESS**

9 **THE ISSUE OF CORPORATE EXPATRIATION.**

10 (a) FINDINGS.—The Congress finds that—

11 (1) the tax laws of the United States are overly
12 complex;

13 (2) the tax laws of the United States are among
14 the most burdensome and uncompetitive in the
15 world;

16 (3) the tax laws of the United States make it
17 difficult for domestically-owned United States com-
18 panies to compete abroad and in the United States;

19 (4) a domestically-owned corporation is dis-
20 advantaged compared to a United States subsidiary
21 of a foreign-owned corporation; and

22 (5) international competitiveness is forcing
23 many United States corporations to make a choice
24 they do not want to make—go out of business, sell
25 the business to a foreign competitor, or become a

1 subsidiary of a foreign corporation (i.e., engage in
2 an inversion transaction).

3 (b) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that passage of legislation to fix the underlying prob-
5 lems with our tax laws is essential and should occur as
6 soon as possible, so United States corporations will not
7 face the current pressures to engage in inversion trans-
8 actions.

9 **DIVISION E—CLEAN COAL**

10 **SEC. 50001. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) CLEAN COAL POWER INITIATIVE.—Except as
12 provided in subsection (b), there are authorized to be ap-
13 propriated to the Secretary to carry out the activities au-
14 thorized by this division \$200,000,000 for each of the fis-
15 cal years 2004 through 2012, to remain available until ex-
16 pended.

17 (b) LIMIT ON USE OF FUNDS.—The Secretary shall
18 transmit to the Committee on Energy and Commerce and
19 the Committee on Science of the House of Representa-
20 tives, and to the Senate, the report required by this sub-
21 section not later than March 31, 2005. Notwithstanding
22 subsection (a), no funds may be used to carry out the ac-
23 tivities authorized by this division after September 30,
24 2005, unless the report has been transmitted and one
25 month has elapsed since that transmission. The report

1 shall include, with respect to subsection (a), a 10-year
2 plan containing—

3 (1) a detailed assessment of whether the aggre-
4 gate funding levels provided under subsection (a) are
5 the appropriate funding levels for that program;

6 (2) a detailed description of how proposals will
7 be solicited and evaluated, including a list of all ac-
8 tivities expected to be undertaken;

9 (3) a detailed list of technical milestones for
10 each coal and related technology that will be pur-
11 sued; and

12 (4) a detailed description of how the program
13 will avoid problems enumerated in General Account-
14 ing Office reports on the Clean Coal Technology
15 Program, including problems that have resulted in
16 unspent funds and projects that failed either finan-
17 cially or scientifically.

18 (c) APPLICABILITY.—Subsection (b) shall not apply
19 to any project begun before September 30, 2005.

20 **SEC. 50002. PROJECT CRITERIA.**

21 (a) IN GENERAL.—The Secretary shall not provide
22 funding under this division for any project that does not
23 advance efficiency, environmental performance, and cost
24 competitiveness well beyond the level of technologies that
25 are in commercial service or have been demonstrated on

1 a scale that the Secretary determines is sufficient to dem-
2 onstrate that commercial service is viable as of the date
3 of the enactment of this Act.

4 (b) TECHNICAL CRITERIA FOR CLEAN COAL POWER
5 INITIATIVE.—

6 (1) GASIFICATION.—(A) In allocating the funds
7 made available under section 50001(a), the Sec-
8 retary shall ensure that at least 60 percent of the
9 funds are used only for projects on coal-based gasifi-
10 cation technologies, including gasification combined
11 cycle, gasification fuel cells, gasification coproduc-
12 tion, and hybrid gasification/combustion.

13 (B) The Secretary shall periodically set tech-
14 nical milestones specifying the emission and thermal
15 efficiency levels that coal gasification projects must
16 be designed to and reasonably expected to achieve.
17 The technical milestones shall get more restrictive
18 during the life of the program. The Secretary shall
19 set the periodic milestones so as to achieve by 2020
20 coal gasification projects able—

21 (i) to remove 99 percent of sulfur dioxide;

22 (ii) to emit no more than .05 lbs of NOx
23 per million BTU;

24 (iii) to achieve substantial reductions in
25 mercury emissions; and

1 (iv) to achieve a thermal efficiency of—

2 (I) 60 percent for coal of more than
3 9,000 Btu;

4 (II) 59 percent for coal of 7,000 to
5 9,000 Btu; and

6 (III) 50 percent for coal of less than
7 7,000 Btu.

8 (2) OTHER PROJECTS.—The Secretary shall pe-
9 riodically set technical milestones for projects not
10 described in paragraph (1). The milestones shall
11 specify the emission and thermal efficiency levels
12 that projects funded under this paragraph must be
13 designed to and reasonably expected to achieve. The
14 technical milestones shall get more restrictive during
15 the life of the program. The Secretary shall set the
16 periodic milestones so as to achieve by 2010 projects
17 able—

18 (A) to remove 97 percent of sulfur dioxide;

19 (B) to emit no more than .08 lbs of NO_x
20 per million BTU;

21 (C) to achieve substantial reductions in
22 mercury emissions; and

23 (D) to achieve a thermal efficiency of—

24 (i) 45 percent for coal of more than
25 9,000 Btu;

- 1 (ii) 44 percent for coal of 7,000 to
2 9,000 Btu; and
3 (iii) 40 percent for coal of less than
4 7,000 Btu.

5 (3) CONSULTATION.—Before setting the tech-
6 nical milestones under paragraphs (1)(B) and (2),
7 the Secretary shall consult with the Administrator of
8 the Environmental Protection Agency and interested
9 entities, including coal producers, industries using
10 coal, organizations to promote coal or advanced coal
11 technologies, environmental organizations, and orga-
12 nizations representing workers.

13 (4) EXISTING UNITS.—In the case of projects
14 at existing units, in lieu of the thermal efficiency re-
15 quirements set forth in paragraph (1)(B)(iv) and
16 (2)(D), the milestones shall be designed to achieve
17 an overall thermal design efficiency improvement
18 compared to the efficiency of the unit as operated,
19 of not less than—

20 (A) 7 percent for coal of more than 9,000
21 Btu;

22 (B) 6 percent for coal of 7,000 to 9,000
23 Btu; or

24 (C) 4 percent for coal of less than 7,000
25 Btu.

1 (5) PERMITTED USES.—In allocating funds
2 made available under section 50001, the Secretary
3 may fund projects that include, as part of the
4 project, the separation and capture of carbon diox-
5 ide.

6 (c) FINANCIAL CRITERIA.—The Secretary shall not
7 provide a funding award under this division unless the re-
8 cipient has documented to the satisfaction of the Secretary
9 that—

10 (1) the award recipient is financially viable
11 without the receipt of additional Federal funding;

12 (2) the recipient will provide sufficient informa-
13 tion to the Secretary for the Secretary to ensure
14 that the award funds are spent efficiently and effec-
15 tively; and

16 (3) a market exists for the technology being
17 demonstrated or applied, as evidenced by statements
18 of interest in writing from potential purchasers of
19 the technology.

20 (d) FINANCIAL ASSISTANCE.—The Secretary shall
21 provide financial assistance to projects that meet the re-
22 quirements of subsections (a), (b), and (c) and are likely
23 to—

24 (1) achieve overall cost reductions in the utiliza-
25 tion of coal to generate useful forms of energy;

1 (2) improve the competitiveness of coal among
2 various forms of energy in order to maintain a diver-
3 sity of fuel choices in the United States to meet elec-
4 tricity generation requirements; and

5 (3) demonstrate methods and equipment that
6 are applicable to 25 percent of the electricity gener-
7 ating facilities, using different types of coal, that use
8 coal as the primary feedstock as of the date of the
9 enactment of this Act.

10 (e) FEDERAL SHARE.—The Federal share of the cost
11 of a coal or related technology project funded by the Sec-
12 retary under this division shall not exceed 50 percent.

13 (f) APPLICABILITY.—No technology, or level of emis-
14 sion reduction, shall be treated as adequately dem-
15 onstrated for purposes of section 111 of the Clean Air Act,
16 achievable for purposes of section 169 of that Act, or
17 achievable in practice for purposes of section 171 of that
18 Act solely by reason of the use of such technology, or the
19 achievement of such emission reduction, by one or more
20 facilities receiving assistance under this division.

21 **SEC. 50003. REPORT.**

22 Not later than 1 year after the date of the enactment
23 of this Act, and once every 2 years thereafter through
24 2011, the Secretary, in consultation with other appro-
25 priate Federal agencies, shall transmit to the Committee

1 on Energy and Commerce and the Committee on Science
2 of the House of Representatives, and to the Senate, a re-
3 port describing—

4 (1) the technical milestones set forth in section
5 50002 and how those milestones ensure progress to-
6 ward meeting the requirements of subsections
7 (b)(1)(B) and (b)(2) of section 50002; and

8 (2) the status of projects funded under this di-
9 vision.

10 **SEC. 50004. CLEAN COAL CENTERS OF EXCELLENCE.**

11 As part of the program authorized in section 50001,
12 the Secretary shall award competitive, merit-based grants
13 to universities for the establishment of Centers of Excel-
14 lence for Energy Systems of the Future. The Secretary
15 shall provide grants to universities that can show the
16 greatest potential for advancing new clean coal tech-
17 nologies.

18 **DIVISION F—HYDROGEN**

19 **SEC. 60001. DEFINITIONS.**

20 In this division:

21 (1) The term “Advisory Committee” means the
22 Hydrogen Technical and Fuel Cell Advisory Com-
23 mittee established under section 60005 of this Act.

24 (2) The term “Department” means the Depart-
25 ment of Energy.

1 (3) The term “fuel cell” means a device that di-
2 rectly converts the chemical energy of a fuel and an
3 oxidant into electricity by an electrochemical process
4 taking place at separate electrodes in the device.

5 (4) The term “infrastructure” means the equip-
6 ment, systems, or facilities used to produce, dis-
7 tribute, deliver, or store hydrogen and other ad-
8 vanced clean fuels.

9 (5) The term “light duty vehicle” means a car
10 or truck, classified by the Department of Transpor-
11 tation as a Class I or IIA vehicle.

12 (6) The term “Secretary” means the Secretary
13 of Energy.

14 **SEC. 60002. PLAN.**

15 Not later than six months after the date of enactment
16 of this Act, the Secretary shall transmit to the Congress
17 a coordinated plan for the programs described in this divi-
18 sion and any other programs of the Department that are
19 directly related to fuel cells or hydrogen. The plan shall
20 describe, at a minimum—

21 (1) the agenda for the next five years for the
22 programs authorized under this division, including
23 the agenda for each activity enumerated in section
24 60003(a);

1 (2) the types of entities that will carry out the
2 activities under this division and what role each enti-
3 ty is expected to play;

4 (3) the milestones that will be used to evaluate
5 the programs for the next five years;

6 (4) the most significant technical and nontech-
7 nical hurdles that stand in the way of achieving the
8 goals described in section 60003(b), and how the
9 programs will address those hurdles; and

10 (5) the policy assumptions that are implicit in
11 the plan, including any assumptions that would af-
12 fect the sources of hydrogen or the marketability of
13 hydrogen-related products.

14 **SEC. 60003. PROGRAM.**

15 (a) ACTIVITIES.—The Secretary, in partnership with
16 the private sector, shall conduct a program to address—

17 (1) production of hydrogen from diverse energy
18 sources, including—

19 (A) fossil fuels, which may include carbon
20 capture and sequestration;

21 (B) hydrogen-carrier fuels (including eth-
22 anol and methanol);

23 (C) renewable energy resources; and

24 (D) nuclear energy;

1 (2) the safe delivery of hydrogen or hydrogen-
2 carrier fuels, including—

3 (A) transmission by pipeline and other dis-
4 tribution methods; and

5 (B) convenient and economic refueling of
6 vehicles either at central refueling stations or
7 through distributed on-site generation;

8 (3) advanced vehicle technologies, including—

9 (A) engine and emission control systems;

10 (B) energy storage, electric propulsion, and
11 hybrid systems;

12 (C) automotive materials;

13 (D) clean fuels in addition to hydrogen;

14 and

15 (E) other advanced vehicle technologies;

16 (4) storage of hydrogen or hydrogen-carrier
17 fuels, including development of materials for safe
18 and economic storage in gaseous, liquid, or solid
19 form at refueling facilities and onboard vehicles;

20 (5) development of safe, durable, affordable,
21 and efficient fuel cells, including research and devel-
22 opment on fuel-flexible fuel cell power systems, im-
23 proved manufacturing processes, high-temperature
24 membranes, cost-effective fuel processing for natural

1 gas, fuel cell stack and system reliability, low tem-
2 perature operation, and cold start capability; and

3 (6) development of necessary codes and stand-
4 ards (including international codes and standards)
5 and safety practices for the production, distribution,
6 storage, and use of hydrogen, hydrogen-carrier fuels
7 and related products.

8 (b) PROGRAM GOALS.—

9 (1) VEHICLES.—For vehicles, the goals of the
10 program are—

11 (A) to enable a commitment by auto-
12 makers no later than year 2015 to offer safe,
13 affordable, and technically viable hydrogen fuel
14 cell vehicles in the mass consumer market; and

15 (B) to enable production, delivery, and ac-
16 ceptance by consumers of model year 2020 hy-
17 drogen fuel cell and other vehicles that will
18 have—

19 (i) a range of at least three hundred
20 miles;

21 (ii) improved performance and ease of
22 driving;

23 (iii) safety and performance com-
24 parable to vehicle technologies in the mar-
25 ket;

(iv) when compared to light duty vehicles in model year 2003—

(I) a fuel economy that is two and one half times the equivalent fuel economy of comparable light duty vehicles in model year 2003; and

(II) near zero emissions of air pollutants; and

(v) vehicle fuel system crash integrity and occupant protection.

(2) HYDROGEN ENERGY AND ENERGY INFRASTRUCTURE.—For hydrogen energy and energy infrastructure, the goals of the program are to enable a commitment not later than 2015 that will lead to infrastructure by 2020 that will provide—

(A) safe and convenient refueling;

(B) improved overall efficiency;

(C) widespread availability of hydrogen from domestic energy sources through—

(i) production, with consideration of emissions levels;

(ii) delivery, including transmission by pipeline and other distribution methods for hydrogen; and

1 (iii) storage, including storage in sur-
2 face transportation vehicles;

3 (D) hydrogen for fuel cells, internal com-
4 bustion engines, and other energy conversion
5 devices for portable, stationary, and transpor-
6 tation applications; and

7 (E) other technologies consistent with the
8 Department's plan.

9 (3) FUEL CELLS.—The goals for fuel cells and
10 their portable, stationary, and transportation appli-
11 cations are to enable—

12 (A) safe, economical, and environmentally
13 sound hydrogen fuel cells;

14 (B) fuel cells for light duty and other vehi-
15 cles; and

16 (C) other technologies consistent with the
17 Department's plan.

18 (c) DEMONSTRATION.—In carrying out the program
19 under this section, the Secretary shall fund a limited num-
20 ber of demonstration projects. In selecting projects under
21 this subsection, the Secretary shall, to the extent prac-
22 ticable and in the public interest, select projects that—

23 (1) involve using hydrogen and related products
24 at facilities or installations that would exist without
25 the demonstration program, such as existing office

1 buildings, military bases, vehicle fleet centers, tran-
2 sit bus authorities, or parks;

3 (2) depend on reliable power from hydrogen to
4 carry out essential activities;

5 (3) lead to the replication of hydrogen tech-
6 nologies and draw such technologies into the market-
7 place;

8 (4) integrate in a single project both mobile and
9 stationary applications of hydrogen fuel cells;

10 (5) address the interdependency of demand for
11 hydrogen fuel cell applications and hydrogen fuel in-
12 frastructure; and

13 (6) raise awareness of hydrogen technology
14 among the public.

15 (d) DEPLOYMENT.—In carrying out the program
16 under this section, the Secretary shall, in partnership with
17 the private sector, conduct activities to facilitate the de-
18 ployment of—

19 (1) hydrogen energy and energy infrastructure;

20 (2) fuel cells;

21 (3) advanced vehicle technologies; and

22 (4) clean fuels in addition to hydrogen.

23 (e) FUNDING.—(1) The Secretary shall carry out the
24 program under this section using a competitive, merit-re-
25 view process and consistent with the generally applicable

1 Federal laws and regulations governing awards of finan-
2 cial assistance, contracts, or other agreements.

3 (2) Activities under this section may be carried out
4 by funding nationally recognized university-based research
5 centers.

6 (3) The Secretary shall endeavor to avoid duplication
7 or displacement of other research and development pro-
8 grams and activities.

9 (f) COST SHARING.—

10 (1) REQUIREMENT.—For projects carried out
11 through grants, cooperative agreements, or contracts
12 under this section, the Secretary shall require a
13 commitment from non-Federal sources of at least—

14 (A) 20 percent of the cost of a project, ex-
15 cept projects carried out under subsections (c)
16 and (d); and

17 (B) 50 percent of the cost of a project car-
18 ried out under subsection (c) or (d).

19 (2) REDUCTION.—The Secretary may reduce
20 the non-Federal requirement under paragraph (1) if
21 the Secretary determines that—

22 (A) the reduction is appropriate consid-
23 ering the technological risks involved; or

1 (B) the project is for technical analyses or
2 other activities that the Secretary does not ex-
3 pect to result in a marketable product.

4 (3) SIZE OF NON-FEDERAL SHARE.—The Sec-
5 retary may consider the size of the non-Federal
6 share in selecting projects.

7 **SEC. 60004. INTERAGENCY TASK FORCE.**

8 (a) ESTABLISHMENT.—Not later than 120 days after
9 the date of enactment of this Act, the President shall es-
10 tablish an interagency task force chaired by the Secretary
11 or his designee with representatives from each of the fol-
12 lowing:

13 (1) The Office of Science and Technology Pol-
14 icy within the Executive Office of the President.

15 (2) The Department of Transportation.

16 (3) The Department of Defense.

17 (4) The Department of Commerce (including
18 the National Institute of Standards and Tech-
19 nology).

20 (5) The Environmental Protection Agency.

21 (6) The National Aeronautics and Space Ad-
22 ministration.

23 (7) Other Federal agencies as the Secretary de-
24 termines appropriate.

25 (b) DUTIES.—

1 (1) PLANNING.—The interagency task force
2 shall work toward—

3 (A) a safe, economical, and environ-
4 mentally sound fuel infrastructure for hydrogen
5 and hydrogen-carrier fuels, including an infra-
6 structure that supports buses and other fleet
7 transportation;

8 (B) fuel cells in government and other ap-
9 plications, including portable, stationary, and
10 transportation applications;

11 (C) distributed power generation, including
12 the generation of combined heat, power, and
13 clean fuels including hydrogen;

14 (D) uniform hydrogen codes, standards,
15 and safety protocols; and

16 (E) vehicle hydrogen fuel system integrity
17 safety performance.

18 (2) ACTIVITIES.—The interagency task force
19 may organize workshops and conferences, may issue
20 publications, and may create databases to carry out
21 its duties. The interagency task force shall—

22 (A) foster the exchange of generic, non-
23 proprietary information and technology among
24 industry, academia, and government;

1 (B) develop and maintain an inventory and
2 assessment of hydrogen, fuel cells, and other
3 advanced technologies, including the commercial
4 capability of each technology for the economic
5 and environmentally safe production, distribu-
6 tion, delivery, storage, and use of hydrogen;

7 (C) integrate technical and other informa-
8 tion made available as a result of the programs
9 and activities under this division;

10 (D) promote the marketplace introduction
11 of infrastructure for hydrogen and other clean
12 fuel vehicles; and

13 (E) conduct an education program to pro-
14 vide hydrogen and fuel cell information to po-
15 tential end-users.

16 (c) AGENCY COOPERATION.—The heads of all agen-
17 cies, including those whose agencies are not represented
18 on the interagency task force, shall cooperate with and
19 furnish information to the interagency task force, the Ad-
20 visory Committee, and the Department.

21 **SEC. 60005. ADVISORY COMMITTEE.**

22 (a) ESTABLISHMENT.—The Hydrogen Technical and
23 Fuel Cell Advisory Committee is established to advise the
24 Secretary on the programs and activities under this divi-
25 sion.

1 (b) MEMBERSHIP.—

2 (1) MEMBERS.—The Advisory Committee is
3 comprised of not fewer than 12 nor more than 25
4 members. These members shall be appointed by the
5 Secretary to represent domestic industry, academia,
6 professional societies, government agencies, and fi-
7 nancial, environmental, and other appropriate orga-
8 nizations based on the Department's assessment of
9 the technical and other qualifications of committee
10 members and the needs of the Advisory Committee.

11 (2) TERMS.—The term of a member of the Ad-
12 visory Committee shall not be more than 3 years.
13 The Secretary may appoint members of the Advisory
14 Committee in a manner that allows the terms of the
15 members serving at any time to expire at spaced in-
16 tervals so as to ensure continuity in the functioning
17 of the Advisory Committee. A member of the Advi-
18 sory Committee whose term is expiring may be re-
19 appointed.

20 (3) CHAIRPERSON.—The Advisory Committee
21 shall have a chairperson, who is elected by the mem-
22 bers from among their number.

23 (c) REVIEW.—The Advisory Committee shall review
24 and make recommendations to the Secretary on—

1 (1) the implementation of programs and activi-
2 ties under this division;

3 (2) the safety, economical, and environmental
4 consequences of technologies for the production, dis-
5 tribution, delivery, storage, or use of hydrogen en-
6 ergy and fuel cells; and

7 (3) the plan under section 60002.

8 (d) RESPONSE.—(1) The Secretary shall consider,
9 but need not adopt, any recommendations of the Advisory
10 Committee under subsection (c).

11 (2) The Secretary shall transmit a biennial report to
12 the Congress describing any recommendations made by
13 the Advisory Committee since the previous report. The re-
14 port shall include a description of how the Secretary has
15 implemented or plans to implement the recommendations,
16 or an explanation of the reasons that a recommendation
17 will not be implemented. The report shall be transmitted
18 along with the President's budget proposal.

19 (e) SUPPORT.—The Secretary shall provide resources
20 necessary in the judgment of the Secretary for the Advi-
21 sory Committee to carry out its responsibilities under this
22 division.

23 **SEC. 60006. EXTERNAL REVIEW.**

24 (a) PLAN.—The Secretary shall enter into an ar-
25 rangement with a competitively selected nongovernmental

1 entity, such as the National Academy of Sciences, to re-
2 view the plan prepared under section 60002, which shall
3 be completed not later than six months after the entity
4 receives the plan. Not later than 45 days after receiving
5 the review, the Secretary shall transmit the review to the
6 Congress along with a plan to implement the review's rec-
7 ommendations or an explanation of the reasons that a rec-
8 ommendation will not be implemented.

9 (b) **ADDITIONAL REVIEW.**—The Secretary shall enter
10 into an arrangement with a competitively selected non-
11 governmental entity, such as the National Academy of
12 Sciences, under which the entity will review the program
13 under section 60003 during the fourth year following the
14 date of enactment of this Act. The entity's review shall
15 include the research priorities and technical milestones,
16 and evaluate the progress toward achieving them. The re-
17 view shall be completed no later than five years after the
18 date of enactment of this Act. Not later than 45 days after
19 receiving the review, the Secretary shall transmit the re-
20 view to the Congress along with a plan to implement the
21 review's recommendations or an explanation for the rea-
22 sons that a recommendation will not be implemented.

23 **SEC. 60007. MISCELLANEOUS PROVISIONS.**

24 (a) **REPRESENTATION.**—The Secretary may rep-
25 resent the United States interests with respect to activities

1 and programs under this division, in coordination with the
2 Department of Transportation, the National Institute of
3 Standards and Technology, and other relevant Federal
4 agencies, before governments and nongovernmental orga-
5 nizations including—

6 (1) other Federal, State, regional, and local
7 governments and their representatives;

8 (2) industry and its representatives, including
9 members of the energy and transportation indus-
10 tries; and

11 (3) in consultation with the Department of
12 State, foreign governments and their representatives
13 including international organizations.

14 (b) REGULATORY AUTHORITY.—Nothing in this divi-
15 sion shall be construed to alter the regulatory authority
16 of the Department.

17 **SEC. 60008. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated to carry out
19 this division, in addition to any amounts made available
20 for these purposes under other Acts—

21 (1) \$273,500,000 for fiscal year 2004;

22 (2) \$325,000,000 for fiscal year 2005;

23 (3) \$375,000,000 for fiscal year 2006;

24 (4) \$400,000,000 for fiscal year 2007; and

25 (5) \$425,000,000 for fiscal year 2008.”.

1 **SEC. 60009. FUEL CELL PROGRAM AT NATIONAL PARKS.**

2 The Secretary of Energy, in cooperation with the Sec-
3 retary of Interior and the National Park Service, is au-
4 thorized to establish a program to provide matching funds
5 to assist in the deployment of fuel cells at one or more
6 prominent National Parks. The Secretary of Energy shall
7 transmit to Congress within 1 year, and annually there-
8 after, a report describing any activities taken pursuant to
9 such program. The report shall address whether activities
10 taken pursuant to such program reduce the environmental
11 impacts of energy use at National Parks. There are au-
12 thorized to be appropriated \$2,000,000 for each of fiscal
13 years 2004 through 2010 to carry out the purposes of this
14 section.

15 **SEC. 60010. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
16 **CENTIVE PROGRAM.**

17 (a) PROGRAM.—The Secretary of Energy is author-
18 ized to establish an Advanced Power System Technology
19 Incentive Program to support the deployment of certain
20 advanced power system technologies and to improve and
21 protect certain critical governmental, industrial, and com-
22 mercial processes. Funds provided under this section shall
23 be used by the Secretary to make incentive payments to
24 eligible owners or operators of advanced power system
25 technologies to increase power generation through en-
26 hanced operational, economic, and environmental perform-

1 ance. Payments under this section may only be made upon
2 receipt by the Secretary of an incentive payment applica-
3 tion establishing an applicant as either—

4 (1) a qualifying advanced power system tech-
5 nology facility; or

6 (2) a qualifying security and assured power fa-
7 cility.

8 (b) INCENTIVES.—Subject to availability of funds, a
9 payment of 1.8 cents per kilowatt-hour shall be paid to
10 the owner or operator of a qualifying advanced power sys-
11 tem technology facility under this section for electricity
12 generated at such facility. An additional 0.7 cents per kilo-
13 watt-hour shall be paid to the owner or operator of a quali-
14 fying security and assured power facility for electricity
15 generated at such facility. Any facility qualifying under
16 this section shall be eligible for an incentive payment for
17 up to, but not more than, the first 10,000,000 kilowatt-
18 hours produced in any fiscal year.

19 (c) ELIGIBILITY.—For purposes of this section—

20 (1) the term “qualifying advanced power system
21 technology facility” means a facility using an ad-
22 vanced fuel cell, turbine, or hybrid power system or
23 power storage system to generate or store electric
24 energy; and

1 (2) the term “qualifying security and assured
2 power facility” means a qualifying advanced power
3 system technology facility determined by the Sec-
4 retary of Energy, in consultation with the Secretary
5 of Homeland Security, to be in critical need of se-
6 cure, reliable, rapidly available, high-quality power
7 for critical governmental, industrial, or commercial
8 applications.

9 (d) AUTHORIZATION.—There are authorized to be ap-
10 propriated to the Secretary of Energy for the purposes
11 of this section, \$10,000,000 for each of the fiscal years
12 2004 through 2010.

13 **DIVISION G—HOUSING**

14 **SEC. 70001. CAPACITY BUILDING FOR ENERGY-EFFICIENT,** 15 **AFFORDABLE HOUSING.**

16 Section 4(b) of the HUD Demonstration Act of 1993
17 (42 U.S.C. 9816 note) is amended—

18 (1) in paragraph (1), by inserting before the
19 semicolon at the end the following: “, including ca-
20 pabilities regarding the provision of energy efficient,
21 affordable housing and residential energy conserva-
22 tion measures”; and

23 (2) in paragraph (2), by inserting before the
24 semicolon the following: “, including such activities
25 relating to the provision of energy efficient, afford-

1 able housing and residential energy conservation
2 measures that benefit low-income families”.

3 **SEC. 70002. INCREASE OF CDBG PUBLIC SERVICES CAP FOR**
4 **ENERGY CONSERVATION AND EFFICIENCY**
5 **ACTIVITIES.**

6 Section 105(a)(8) of the Housing and Community
7 Development Act of 1974 (42 U.S.C. 5305(a)(8)) is
8 amended—

9 (1) by inserting “or efficiency” after “energy
10 conservation”;

11 (2) by striking “, and except that” and insert-
12 ing “; except that”; and

13 (3) by inserting before the period at the end the
14 following: “; and except that each percentage limita-
15 tion under this paragraph on the amount of assist-
16 ance provided under this title that may be used for
17 the provision of public services is hereby increased
18 by 10 percent, but such percentage increase may be
19 used only for the provision of public services con-
20 cerning energy conservation or efficiency”.

21 **SEC. 70003. FHA MORTGAGE INSURANCE INCENTIVES FOR**
22 **ENERGY EFFICIENT HOUSING.**

23 (a) SINGLE FAMILY HOUSING MORTGAGE INSUR-
24 ANCE.—Section 203(b)(2) of the National Housing Act
25 (12 U.S.C. 1709(b)(2)) is amended, in the first undesig-

1 nated paragraph beginning after subparagraph (B)(ii)(IV)
2 (relating to solar energy systems), by striking “20 per-
3 cent” and inserting “30 percent”.

4 (b) MULTIFAMILY HOUSING MORTGAGE INSUR-
5 ANCE.—Section 207(c) of the National Housing Act (12
6 U.S.C. 1713(c)) is amended, in the second undesignated
7 paragraph beginning after paragraph (3) (relating to solar
8 energy systems and residential energy conservation meas-
9 ures), by striking “20 percent” and inserting “30 per-
10 cent”.

11 (c) COOPERATIVE HOUSING MORTGAGE INSUR-
12 ANCE.—Section 213(p) of the National Housing Act (12
13 U.S.C. 1715e(p)) is amended by striking “20 per centum”
14 and inserting “30 percent”.

15 (d) REHABILITATION AND NEIGHBORHOOD CON-
16 SERVATION HOUSING MORTGAGE INSURANCE.—Section
17 220(d)(3)(B)(iii)(IV) of the National Housing Act (12
18 U.S.C. 1715k(d)(3)(B)(iii)(IV)) is amended by striking
19 “20 per centum” and inserting “30 percent”.

20 (e) LOW-INCOME MULTIFAMILY HOUSING MORT-
21 GAGE INSURANCE.—Section 221(k) of the National Hous-
22 ing Act (12 U.S.C. 1715l(k)) is amended by striking “20
23 per centum” and inserting “30 percent”.

24 (f) ELDERLY HOUSING MORTGAGE INSURANCE.—
25 Section 231(c)(2)(C) of the National Housing Act (12

1 U.S.C. 1715v(c)(2)(C)) is amended by striking “20 per
2 centum” and inserting “30 percent”.

3 (g) CONDOMINIUM HOUSING MORTGAGE INSUR-
4 ANCE.—Section 234(j) of the National Housing Act (12
5 U.S.C. 1715y(j)) is amended by striking “20 per centum”
6 and inserting “30 percent”.

7 **SEC. 70004. PUBLIC HOUSING CAPITAL FUND.**

8 Section 9 of the United States Housing Act of 1937
9 (42 U.S.C. 1437g) is amended—

10 (1) in subsection (d)(1)—

11 (A) in subparagraph (I), by striking “and”
12 at the end;

13 (B) in subparagraph (J), by striking the
14 period at the end and inserting a semicolon;
15 and

16 (C) by adding at the end the following new
17 subparagraphs:

18 “(K) improvement of energy and water-use
19 efficiency by installing fixtures and fittings that
20 conform to the American Society of Mechanical
21 Engineers/American National Standards Insti-
22 tute standards A112.19.2-1998 and A112.18.1-
23 2000, or any revision thereto, applicable at the
24 time of installation, and by increasing energy
25 efficiency and water conservation by such other

means as the Secretary determines are appropriate; and

“(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.”; and

(2) in subsection (e)(2)(C)—

(A) by striking “The” and inserting the following:

“(i) IN GENERAL.—The”; and

(B) by adding at the end the following:

“(ii) THIRD PARTY CONTRACTS.—

Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

“(iii) TERM OF CONTRACT.—The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements,

1 wall insulation, site-based generations, ad-
2 vanced energy savings technologies, includ-
3 ing renewable energy generation, and other
4 such retrofits.”.

5 **SEC. 70005. GRANTS FOR ENERGY-CONSERVING IMPROVE-**
6 **MENTS FOR ASSISTED HOUSING.**

7 Section 251(b)(1) of the National Energy Conserva-
8 tion Policy Act (42 U.S.C. 8231(1)) is amended—

9 (1) by striking “financed with loans” and in-
10 serting “assisted”;

11 (2) by inserting after “1959,” the following:
12 “which are eligible multifamily housing projects (as
13 such term is defined in section 512 of the Multi-
14 family Assisted Housing Reform and Affordability
15 Act of 1997 (42 U.S.C. 1437f note)) and are subject
16 to mortgage restructuring and rental assistance suf-
17 ficiency plans under such Act,”; and

18 (3) by inserting after the period at the end of
19 the first sentence the following new sentence: “Such
20 improvements may also include the installation of
21 energy and water conserving fixtures and fittings
22 that conform to the American Society of Mechanical
23 Engineers/American National Standards Institute
24 standards A112.19.2-1998 and A112.18.1-2000, or

1 any revision thereto, applicable at the time of instal-
2 lation.”.

3 **SEC. 70006. NORTH AMERICAN DEVELOPMENT BANK.**

4 Part 2 of subtitle D of title V of the North American
5 Free Trade Agreement Implementation Act (22 U.S.C.
6 290m–290m-3) is amended by adding at the end the fol-
7 lowing:

8 **“SEC. 545. SUPPORT FOR CERTAIN ENERGY POLICIES.**

9 “Consistent with the focus of the Bank’s Charter on
10 environmental infrastructure projects, the Board members
11 representing the United States should use their voice and
12 vote to encourage the Bank to finance projects related to
13 clean and efficient energy, including energy conservation,
14 that prevent, control, or reduce environmental pollutants
15 or contaminants.”.

16 **SEC. 70007. ENERGY-EFFICIENT APPLIANCES.**

17 In purchasing appliances, a public housing agency
18 shall purchase energy-efficient appliances that are Energy
19 Star products or FEMP-designated products, as such
20 terms are defined in section 552 of the National Energy
21 Policy and Conservation Act (as amended by this Act),
22 unless the purchase of energy-efficient appliances is not
23 cost-effective to the agency.

1 **SEC. 70008. ENERGY EFFICIENCY STANDARDS.**

2 Section 109 of the Cranston-Gonzalez National Af-
3 fordable Housing Act (42 U.S.C. 12709) is amended—

4 (1) in subsection (a)—

5 (A) in paragraph (1)—

6 (i) by striking “1 year after the date
7 of the enactment of the Energy Policy Act
8 of 1992” and inserting “September 30,
9 2004”;

10 (ii) in subparagraph (A), by striking
11 “and” at the end;

12 (iii) in subparagraph (B), by striking
13 the period at the end and inserting “;
14 and”; and

15 (iv) by adding at the end the fol-
16 lowing:

17 “(C) rehabilitation and new construction of
18 public and assisted housing funded by HOPE
19 VI revitalization grants under section 24 of the
20 United States Housing Act of 1937 (42 U.S.C.
21 1437v), where such standards are determined
22 to be cost effective by the Secretary of Housing
23 and Urban Development.”; and

24 (B) in paragraph (2), by striking “Council
25 of American” and all that follows through

1 “‘90.1–1989’)” and inserting “‘2000 Inter-
2 national Energy Conservation Code”;

3 (2) in subsection (b)—

4 (A) by striking “1 year after the date of
5 the enactment of the Energy Policy Act of
6 1992” and inserting “September 30, 2004”;
7 and

8 (B) by striking “CABO” and all that fol-
9 lows through “1989” and inserting “the 2000
10 International Energy Conservation Code”; and
11 (3) in subsection (c)—

12 (A) in the heading, by striking “MODEL
13 ENERGY CODE” and inserting “THE INTER-
14 NATIONAL ENERGY CONSERVATION CODE”;
15 and

16 (B) by striking “CABO” and all that fol-
17 lows through “1989” and inserting “the 2000
18 International Energy Conservation Code”.

19 **SEC. 70009. ENERGY STRATEGY FOR HUD.**

20 The Secretary of Housing and Urban Development
21 shall develop and implement an integrated strategy to re-
22 duce utility expenses through cost-effective energy con-
23 servation and efficiency measures and energy efficient de-
24 sign and construction of public and assisted housing. The
25 energy strategy shall include the development of energy

1 reduction goals and incentives for public housing agencies.
2 The Secretary shall submit a report to Congress, not later
3 than one year after the date of the enactment of this Act,
4 on the energy strategy and the actions taken by the De-
5 partment of Housing and Urban Development to monitor
6 the energy usage of public housing agencies and shall sub-
7 mit an update every two years thereafter on progress in
8 implementing the strategy.

Passed the House of Representatives April 11, 2003.

Attest:

JEFF TRANDAHL,

Clerk.

Calendar No. 85

108TH CONGRESS
1ST SESSION

H. R. 6

AN ACT

To enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

MAY 6, 2003

Read the second time and placed on the calendar